TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. [redacted]43

JOHN S. FISHER, JAMES H. FISHER, [redacted]
ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 24, 1930.

(21,291.)

POOR COPY

(21,281.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 217.

JOHN B. FISHER, JAMES M. FISHER, WILLIAM G. FISHER, ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1909.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 17022.

STATE OF LOUISIANA ex Rel. FISHER, GASQUET, and Others, Plaintiffs in Error,
versus
MAYOR AND COUNCIL OF NEW ORLEANS, Defendants in Error.

Charles Loque, for Plaintiffs in Error.
St. Clair Adams, Assistant City Attorney, for Defendants in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, Returnable at the City of Washington, D. C., within Thirty Days (30) from the Second Day of July, A. D. 1908.

TRANSCRIPT OF RECORD.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition for Writ of Mandamus, Affidavits, Order and List of School Certificates Without Judgments.

Filed April 30th, 1907.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET, & ALS.
vs.
MAYOR & COUNCIL OF NEW ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of the State of Louisiana ex rel. John B. Fisher, James M. Fisher, Wm. G. Fisher, and Robert B. Fisher; Francis James Gasquet, and the heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; heirs, Jean Pome; Georgiana T. Fredrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; heirs, M. W. Mewman; E. Emanuel; J. M. Malter; S. E. Hillie;

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A. E. Brewer; E. Easton; Anna Feldman and Est. Adele Beer, John A. Gothans; Dr. St. M. Fortier; Wid. Eugene Quinlan executors of F. J. Quinlan, universal legatee of Mary Quinlan; all of whom reside in New Orleans; D. A. Chaffraix; a citizen of the French Republic; Miss Edith Faurie and T. P. Wharton, citizens of the State of New York; and Miss Fannie De Lacy, a citizen of the State of Montana;

Respectfully represents:

2 That your relators have claims against the Board of Directors of the City Schools of New Orleans, now reduced to judgments in the following cases, to wit: Fisher vs. School Board #30262 C. D. C.; also #39997 C. D. C. and #43840 C. D. C.; Gasquet vs. School Board #35156 C. D. C.; Venta vs. School Board #35932 C. D. C.; Pomes vs. School Board #52950; Young et als. vs. School Board #12339 C. D. C.; Fortier vs. School Board #28801 City Court of N. O.; Duclaux vs. School Board #43557 C. D. C.; Sintes vs. School Board #56549 C. D. C.; Gauthreaux vs. School Board #9647—2nd C. C.; Johnson vs. School Board #55127 C. D. C.; Abraham vs. School Board #55115 C. D. C.; Quinlan vs. School Board #53102 C. D. C.; Chaffraix vs. School Board #55254 C. D. C.; Faurie vs. School Board #64646 C. D. C.; Mrs. Anna Fellman vs. School Board #57073 C. D. C.; amounting in the aggregate to about two hundred thousand which judgments and certificates are referred to and make part hereof;

That your relators Miss E. McCerran, M. W. Newman, E. Emanuel, J. M. Marter; S. E. Ellis, S. Easton, and A. E. Brewer, and Est. of Mrs. Adele Beer are the holders of which certificates on which judgment has not been rendered amounting to one thousand nine hundred and sixty and 17/100 dollars hereto annexed and made part hereof, and thirty thousand eight hundred and eighty and 05/100 dollars in suit of Mrs. Adele Beer vs. School Board #56972 C. D. C.; all of which are hereto annexed and made part of this petition;

That all of said certificates and judgments were issued and based on specific and express contracts entered into between the Board of Directors of said City Schools and relators who were teachers, and others on contracts which have been transferred to your relators;

Your Relators aver that said contracts were entered into during the years 1874, 1875, and 1876, under the provisions of Act 36 of 1873 which authorized the School Board to enter into said contracts and said Act of 1873 made them payable out of a special tax to be

3 levied by the City of New Orleans, for the support of the Public Schools.

That under Section 4 of said Act, no limit of the rate of said special tax was fixed.

That under the law the rate of taxation existing at the time of the contract formed a part of the contract and is read into it and continues to exist irrespective of subsequent legislation or constitutional enactments restricting the power of taxation;

That section 10 of Article 1 of the Constitution of the United

States protects the contracts of Relators from being impaired by subsequent legislation;

Relators aver that the limitation of taxation as contained in article 232 of the Constitution of the State of Louisiana of 1898, is null and void and contrary to the article of the Constitution of the United States aforesaid;

Your relators aver further that they obtained from the City of New Orleans an account of all the School Taxes collected by her, but the payment made on such accounting was not sufficient to satisfy the outstanding contracts;

Relators further aver that a sufficient amount of School taxes has not been levied for the years 1873 to 1877 to pay and satisfy the judgments and claims held by your Relators against the School Board;

Relators further aver that a writ of fieri facias has been issued against the School Board and that the same was returned nulla bona after due demand from the School Board;

That Relators know of no property owned by the School Board liable to seizure;

That a demand was made on the Mayor of the City of New Orleans to point out property, and after due demand he has been unable to point out any.

Your relators aver that the claims and judgments held by them amount to more than two hundred and fifty thousand dollars in principal, exclusive of legal interest which said claims bear;

4 That a tax of one and one half mills is necessary to pay the judgments and claims held by Relators;

That the authority granted to the Board of School Directors to enter into contract with relators and their transferees payable from the proceeds of a special tax was authority to levy the tax to pay the obligations created by and arising from said contracts;

That relators are entitled to levy a special tax to pay their judgments and claims, which the City of New Orleans refuses to levy;

Wherefore Relators pray that a writ of mandamus issue herein, directed to the Mayor and Council of the City of New Orleans, directing them to levy a special tax of one and one half mills to pay the claims and judgments obtained by Relators, or show cause on such day as this Hon. Court may fix why the writ of mandamus should not be made peremptory with costs, and relators pray for general relief, &c.

(Signed) CHAS. LOUQUE,
" HOWE, FENNER, SPENCER & COCKE, *Att'y-*.

Chas. Louque, being duly sworn says that the facts and allegations of the foregoing petition are true and correct and that John B. Fisher, Edith Faurie, D. A. Chaffeaix, T. P. Wharton and Fannie De Lacy are now absent from the State.

(Signed) CHAS. LOUQUE.

Sworn to and subscribed before — this 30th day of April, 1907.

[SEAL.] (Signed) JOHN WAGNER, *Not. Pub.*

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F. J. Gasquet being duly sworn says that all the facts and allegations of the foregoing petition are true and correct.

(Signed) F. J. GASQUET.

Sworn to and subscribed before me this 3rd of May, 1907.

[SEAL.] (Signed) JOHN WAGNER, *Not. Pub.*

5 D. B. Martinez one of the members of the firm of U. Koen and Co., one of the Relators herein, being duly sworn says that all the facts and allegations of the foregoing petition are true and correct.

(Signed) D. B. MARTINEZ.

Sworn to and subscribed before me this 8th day of May, 1907.

[SEAL.] (Signed) JNO. WAGNER, *Not. Pub.*

Order.

Let, as within prayed for, the Mayor of the City of New Orleans, Martin Behrman, and the members of the City Council of New Orleans, show cause on Friday the 10th of May, 1907, at 11 o'clock A. M. why a writ of mandamus should not issue herein, ordering the Mayor and City Council of New Orleans to levy a special tax of one and one half mills to pay the judgments and claims of Relators.

New Orleans, April 30th, 1907.

(Signed) FRED. D. KING, *Judge.*

Civil District Court, Parish of Orleans, Division B.

No. 82482.

STATE ex Rel. FISHER, GASQUET et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

Note of Evidence on Behalf of Relators, Taken in Open Court, Hon. Fred D. King, Presiding, on Friday May 17th, 1907.

Appearances: Messrs. Charles Louque and Charles P. Fenner, Attorneys for Relators.

Samuel L. Gilmore, Esq., Attorneys for Respondents.

6 By Mr. GILMORE: I understand that the proper procedure is to refer the exceptions to the merits and try all the case together.

By the COURT: Yes. The whole case will be tried together.

By Mr. LOUQUE: I offer in evidence record No. 30,262 of the Civil District Court, entitled Fisher vs. School Board——

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By Mr. GILMORE: Counsel for the respondents objects to the offer or the introduction of any evidence in support of relators' claim or in support of relators' petition, for the reason that Section 4 of Act 36 of 1873, which by the relators' petition is alleged to allow an unlimited power of special taxation for school purposes for the City of New Orleans, does not allow, as a part of any contract right the levy of any tax for school purposes over and above one quarter of one per cent; and upon the further ground that relators' petition discloses no cause of action.

(The Court took the objection under advisement, and the case was continued to Friday, May 24th, 1907.)

In Open Court, Wednesday, May 22nd, 1907.

By the COURT: The exceptions filed by the defendant in its return, and the objections urged to the admissibility of any evidence offered by plaintiff, are overruled as going to the effect to be given to the evidence, and not to its admissibility.

Return and Answer.

Filed May 17th, 1907.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET et als.
VS.
7 MAYOR AND COUNCIL OF NEW ORLEANS.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

Now into this Honorable Court, through its undersigned counsel, comes the Mayor and Council of the City of New Orleans, and for exception to relator's petition say that relator's petition discloses no cause of action against these respondents;

And in case said exception be overruled, and not otherwise, these respondents reserve the benefit of said exception and of all other legal exceptions;

And for answer to relator's petition, and for return to the order of this Honorable Court herein rendered under date of April 30th, 1907, directing these respondents to show cause on Friday, the 10th day of May, 1907, at 11 o'clock A. M., why a writ of mandamus should not issue herein ordering these respondents to levy a special tax of one and one half mills to pay the judgments and claims of relators, deny all and singular the allegations in relator's petition contained, except such as may be hereinafter specially admitted.

Further answering these respondents aver that section 4 of act 36 of 1873 provided as follows:

COPY

"That the council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provisions for the public schools in addition to these required in section 3 and those ordered for the protection of City property, for the purpose of such support it shall levy a tax of not less than one fourth of one per cent on all taxable property in the City of New Orleans; and no provision in any special or general law limiting the aggregate power of taxation of the City of New Orleans, or of the Council, shall prevent the levying of at least one fourth of one per cent per annum for School purposes."

Further answering these respondents deny that Section 4 of Act 36 of 1873 intended to confer or did confer, upon relators,
8 or upon other persons dealing with the Board of School Directors of the City of New Orleans, any contract right to an unlimited special tax to be levied by the City of New Orleans for school purposes; but respondents aver that the only special tax, and the only tax, which, by section 4, of act 36, of 1873, the City of New Orleans was bound to levy for school purposes for the years 1873, 1874, 1875 and 1876, and subsequent years, was one fourth of one per cent; and that the City of New Orleans did, in the years 1874, 1875 and 1876, levy, in accordance with Section 4, of act of 1873, a special tax for school purposes of one-fourth of one per cent.

Further answering these respondents aver that the only rate of taxation, special or otherwise, which formed part of any contract made by relators with the School Board, if any tax of any amount did form part of such contract which respondents deny was a special tax of one fourth of one per cent; all taxation by the City of New Orleans for school purposes over and above said one-fourth of one per cent being, by Section 4 of act 36 of 1873; left to the discretion of the City of New Orleans, and constituting in no way or manner part of any contract made between relators and the Board of School Directors of the City of New Orleans, or between the Board of School Directors of the City of New Orleans and any other persons.

Further answering these respondents aver that the total amount collected up to date of the special tax of one fourth of one per cent, levied by the City of New Orleans for the years 1874, 1875 and 1876, as aforesaid, has been accounted for and paid over to the relator by the City of New Orleans, and all in-coming collections of said special tax for the years 1874, 1875 and 1876 are, being accounted for and paid over to relators.

Further answering these respondents aver that if the amounts collected, as aforesaid, of the said special taxes for the years 1874, 1875 and 1876 are not sufficient to satisfy relator's claims, relators have no recourse against these respondents for any amounts which may be due them.

9 Further answering these respondents aver that section 10 of act 36 of 1873 provides

"That the Board of Directors of Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent

herein that parties contracting with said board shall take heed and that due revenue shall have been provided to satisfy all claims, otherwise they shall lose and forfeit the same, and no action and execution shall be allowed in aid thereof; that the said Board shall not exceed its powers in the incurring of debt."

Further answering these respondents deny that relators have any contract right against these respondents protected by Section 10 of Article 1 of the Constitution of the United States, or any contract right or privity of contract of any kind or nature whatsoever affecting these respondents.

Respondents further deny that the Board of School Directors of the City of New Orleans created the obligation set forth in relator's petition by virtue of any contract legally entered into, and deny that relators have any right to invoke the protection of the Constitution of the United States herein, and deny that the provisions in regard to the impairment of contracts are, or have been in any manner violated by these respondents.

Further answering respondents deny that certificates of indebtedness issued by the Board of Directors of the Public Schools of New Orleans during the years 1874, 1875 and 1876, or such judgments and claims as relators allege to hold, are evidences of debts against the City of New Orleans or indebtedness of the City of New Orleans, and that relators have no claim of any kind or nature whatsoever against these respondents therefor.

Further answering these respondents aver that the City of New Orleans and these respondents cannot be compelled by mandamus to levy any special tax to pay relators' judgments, for the reasons that Section 1 of Act 5 of the Extra Session of 1870 forbids any Court in the State of Louisiana to issue any writ of mandamus against any official of the City Government to compel the payment of any claim against the City of New Orleans.

Further answering these respondents deny that relators were at the time when their alleged services were rendered and their alleged contracts with the Board of School Directors of the City of New Orleans were executed, entitled to a writ of mandamus to compel the City of New Orleans to levy a greater tax for the years 1874, 1875 and 1876 than one fourth of one per cent; and that relators, by allowing over thirty years to elapse before making any application for such a writ, have acquired any right thereto; but, should be, even if they had originally a right to a writ of mandamus, held to have waived the same.

Further answering these respondents aver that if relators have merged any of the judgments alleged to have been rendered in their favor in the Courts of the State of Louisiana into judgments of the United States Circuit Court for the Eastern District of Louisiana, they are not entitled to a writ of mandamus from the Courts of this State to aid them in the execution of judgments rendered in the United States Circuit Court.

Further answering these respondents deny that the power of the City to levy taxes for the years 1874, 1875 and 1876, except in so far as the special tax for school purposes of one fourth of one

per cent, which, by Section 4 of Act 36 of 1873, the City of New Orleans was directed to levy, and which it did levy, was unlimited; but avers that its power to levy taxes for the years 1874, 1875 and 1876 was and is limited—legally and constitutionally and was and is exhausted.

Further answering these relators aver that relators are without cause of action against these respondents.

Wherefore respondents pray that the order of this Honorable Court made under date of April 30th, 1907, directing these respondents to show cause on the 10th day of May 1907, at eleven o'clock A. M., why a writ of mandamus should not issue ordering
11 them to levy a special tax of one and one half mills, for the payment of the judgments and claims of relators, be annulled, voided and set aside; and that relator's prayer, that the writ of mandamus prayed for be made peremptory, be denied, and that relators' suit be dismissed.

And for general relief.

(Signed) SAM'L L. GILMORE.

Affidavit.

Before me, the undersigned authority, personally came and appeared Martin Behrman to me personally known, who being by me duly sworn, deposes and says, that he is the Mayor of the City of New Orleans, and that the facts stated in the foregoing answer and return are true.

(Signed) MARTIN BEHRMAN.

Sworn to and subscribed before me this 17th day of May, 1907.

[SEAL.] (Signed) CHAS. B. UPTON,
Not. Pub.

Continued for argument.

Extract from the Minutes, Division "B."

MONDAY, *December 16th*, 1907.

Present: Hon. Fred D. King, Judge.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET & als.
vs.
MAYOR AND CITY COUNCIL OF N. O.

This case came on this day for further hearing.

Present: Chas. Louque, Esq., Attorney for Plaintiff. St. Clair Adams, Esq., Attorney for Defendant.

And after hearing the pleadings evidence and counsel, the Court ordered this case continued for argument to Monday December 23rd. 1907.

Motion to Make Parties.

Filed December 16th, 1907.

12 Civil District Court, Division "B."

No. 82482.

FISHER, GASQUET et al.
vs.
MAYOR AND CITY COUNCIL OF THE CITY OF NEW ORLEANS.

On motion of Howe, Fenner, Spencer & Cocke and Charles Louque, attorneys for Mistress Louise L. Gasquet and the Hibernia Bank and Trust Company, as executors of the succession of the late Francis James Gasquet; and on suggesting to the Court that the said Francis James Gasquet, one of the plaintiffs in this suit, died in this City on the 17th day of November 1907; that he left a last will and testament, by the terms of which he appointed movers, Mistress Louise L. Gasquet and the Hibernia Bank and Trust Company, as his executors, that the said last will and testament has been duly probated, and movers the said Mistress Louise L. Gasquet and the Hibernia Bank and Trust Company have been duly appointed and qualified, in accordance with the said last will and testament, as his testamentary executors, in the proceeding entitled and numbered Succession of Francis James Gasquet, No. 84374 of the docket of this Honorable Court; and on further suggesting that movers, in their said capacity as executors, desire to be substituted as parties plaintiff in this cause for the said Francis James Gasquet, deceased:

It is ordered by the court, that movers, the said Mistress Louise L. Gasquet and the Hibernia Bank and Trust Company, in their capacities as executors of the Succession of the said Francis James Gasquet, be, and they are hereby, substituted for the said Francis James Gasquet as parties plaintiff in this cause.

K. D. K.

Civil District Court, Parish of Orleans, Division B.

No. 82482.

STATE ex Rel. FISHER, GASQUET et als.
vs.
13 MAYOR & COUNCIL OF NEW ORLEANS.

Testimony on Behalf of Relators, Taken in Open Court, Honorable Fred D. King Presiding, on Monday, December 16th, 1907.

Appearances: Charles Louque, Esq., Attorney for Relators.
St. Clair Adams, Esq., Attorney for Respondents.

Witnesses: E. A. Williams, p. 4. Frederick C. Font, p. 9.

By Mr. LOUQUE: I offer in evidence the petition, documents annexed, answer and final judgment in the following case: Fisher vs. School Board, No. 30,262 of this Court.

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By Mr. ADAMS: Counsel for the Mayor and City Council objects to said offer upon the ground that this suit for mandamus is in the nature of the execution of a judgment; that said judgment is not against the City of New Orleans, is a judgment against the Board of Directors of the Public Schools of the Parish of Orleans, and which is a corporate entity and a State institution; that the judgment creditor is not a creditor of the City of New Orleans; that he has no privity of contract with the City of New Orleans; that the City of New Orleans is not liable to him in any pecuniary way whatever; that as a condition precedent to the offer of any proof in this case, it is absolutely necessary that the relators should show that the judgment creditor has some privity of contract with the City
14 of New Orleans, or that the City of New Orleans is in some way pecuniarily liable to him, and further, that the City of New Orleans is indebted to the Board of School Directors of the Public Schools of the City of New Orleans. It is further objected that if it is pretended that the City of New Orleans is a debtor of relator, then and in that case relator is without a cause of action, because he must have first obtained a judgment against the City of New Orleans and pursued it to collection, according to the provisions section 1 of act 5 of 1870.

By the COURT: It seems to the Court that those objections clearly go to the effect to be given to the judgment offered, and not to its admissibility, and the Court so rules.

By Mr. ADAMS: Counsel for the Mayor and Council of the City of New Orleans reserves a bill to the Court's ruling.

And it is agreed between Counsel that the foregoing objection shall apply to each and every offer that Counsel shall make to any judgments that may be offered against the Board of School Directors or the City of New Orleans.

By Mr. LOUQUE: And the petition, documents annexed, answer and final judgments in the following cases:

Fisher vs. School Board, 39,997 Civil District Court.
Fisher vs. School Board, 43,840 Civil District Court.
Gasquet vs. School Board, 35,156 Civil District Court.
Venta vs. School Board, 35,932 Civil District Court.
Quinlan vs. School Board, No. 53,102 Civil District Court.
Pomez vs. School Board, 52,950 Civil District Court.
Young vs. School Board, 12,339 Civil District Court.
Duclaux vs. School Board, 43,557 Civil District Court.
Fortier vs. School Board, 28,801, First City Court of New Orleans.
15 Gautreaux vs. School Board, 9647, Second City Court.
Johnson vs. School Board, 55,127 Civil District Court.
Abraham vs. School Board, 55,115 Civil District Court.
Chaffraix vs. School Board, 55,254, Civil District Court.
Sintes vs. School Board, 55,549 Civil District Court.
Edith Faurie vs. School Board, 64,646, Civil District Court.
Fellman vs. School Board, 57,173, Civil District Court.

Counsel for the City of New Orleans renews the objection that he

POOR

has heretofore made, the Court makes the same ruling and the same bill of exception is reserved.

Counsel for the City of New Orleans further objects to each and every one of said judgments upon the ground that they are *res inter alios acta* and irrelevant and immaterial.

The Court makes the same ruling and Counsel for the City of New Orleans reserves the same bill of exceptions.

E. A. WILLIAMS, sworn and examined on behalf of relators.

Direct examination.

By Mr. LOUQUE:

Q. Mr. Williams, will you look at this report and the list of certificates that you have there? Do you recognize those certificates and that list?

A. I do.

Q. Who is it made by, who is the list made by?

A. Myself.

Q. Will you please state whether you examined those certificates and compared them with the pay rolls?

A. I have.

Q. Of the School Board?

A. I have.

15½ Q. Well, did you find them correct?

A. In the majority of instances, except the notations made there.

Q. You have made them?

A. Yes, sir; made on this sheet.

By Mr. LOUQUE: I offer in evidence sixty-nine certificates.

By Mr. ADAMS: Counsel for the City of New Orleans objects to the offer of said certificates or any of them upon the same grounds as heretofore objected when the judgments were sought to be offered, and on the further ground that said certificates have not been reduced to judgment against the Board of Directors of the Public Schools of the Parish of Orleans or against the City of New Orleans: That they represent claims that are disputed not only by the Board of Directors of the Public Schools of New Orleans but by the City of New Orleans, who denies any liability thereon at all; and the objection is further made that the same are *res inter alios acta*, immaterial and irrelevant; that the City of New Orleans, even if it was privy to said certificates and liable thereon, could not be compelled to levy a tax to pay same, they being disputed, and not reduced to judgment. (29 Annual, p. 146.

By Mr. LOUQUE: To get the matter properly before the Court I will ask you—Mr. Williams, you are the Secretary of the School Board?

A. I am.

16 Q. And these certificates that you have been testifying about are certificates that you have looked into and examined?

COPY

A. From the records of the office of the Board.

Q. You compared them with the records of the Board?

A. Yes, sir.

Q. There are pay rolls of the Board which correspond with the certificates that have been offered in evidence?

A. Yes, sir.

Q. Mr. Williams, I notice on the back of the certificate "John J. O'Brien." Who was John J. O'Brien?

A. He was former Secretary of the Board.

Q. He was Secretary of the Board?

A. He was.

Q. And I notice on the back of some of them that the State's portion has been paid?

A. They are in different shapes. In some the State's portion has been paid; others, in addition to the State's portion, a partial payment has been made from the funds received from the City by the Board.

By the COURT: I rather think that the objection is well taken to the offering of the certificates sued on in this petition. The Court considers that they should first be reduced to judgment before you can resort to the mandamus proceedings to compel the City to levy a tax, and shall sustain the objection to the certificates.

By Mr. LOUQUE: I reserve the point, and to the bill of exceptions I will annex the certificates.

By the COURT: Very well. The Court will grant you that permission.

By Mr. LOUQUE: I offer in evidence the printed record in
17 the case of the City of New Orleans vs. Fisher, No. 281 of the October Term of 1899 of the Supreme Court of the United States. Marked "R. 1."

By Mr. ADAMS: Counsel for the City of New Orleans objects to this offer upon all of the grounds heretofore objected to the offers made to the introduction of judgments against the School Board; further, on the ground that this record is *res inter alios acta*, and further, upon the ground that the said petition for mandamus discloses no cause of action against the City of New Orleans.

The Court makes the same ruling, that the objection shall go to the effect to be given to the document offered, and not to its admissibility, and Counsel for the City of New Orleans reserves the same bill of exceptions.

By Mr. LOUQUE: I offer in evidence that record, specially, the testimony of Clark Steen—You will admit that Clark Steen is dead?

By Mr. ADAMS: Yes; that is admitted.

By Mr. LOUQUE: It is admitted that Clark Steen is dead, and I offer in evidence his testimony contained in this printed record at pages 69 to 77 inclusive, together with the report that he made of the school taxes and the collections, which is included, also, in the printed report, at pages 53 to 63.

Same objection as before, same ruling and same bill reserved.

By Mr. LOUQUE: I offer in evidence the proceedings of the City

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Council, duly certified, of October 28th, 1873; October 27,
18 1874; October 19, 1875, and an Ordinance levying a school tax of one-quarter of one per cent. for 1874, No. 2595, A. S.; an Ordinance levying a tax of one-quarter of one per cent. for 1875, No. 2932, A. S.; an ordinance levying a tax of one-quarter of one per cent. for 1876, No. 3367, A. S., and an Ordinance levying a tax of one and a half per cent. for 1877, No. 3868, A. S.

Copy of proceedings of the City Council December 21st, 1875.

Copy of the proceedings of the City Council January 4th, 1876.

Ordinance 6438 A. S., making taxes payable in script; also the Act of 1880 to the same effect, page 48.

I offer in evidence the petition, the answer, the judgment, the writ of fifa and the Marshal's return in the case of Edith Faurie vs. Board of Directors of City Schools, No. 13,080 of the United States Circuit Court for the Eastern District of Louisiana.

By Mr. ADAMS: Same objection is made, and particularly because no evidence is admissible in this suit against the City of New Orleans, because there is no cause of action shown against said City.

The Court makes the same ruling and Counsel for the City of New Orleans reserves the same bill.

FREDERISK C. FONT, sworn and examined on behalf of relators.

Direct examination.

By Mr. LOUQUE:

Q. Mr. Font, are you connected with the City Hall?
A. Yes, sir.
Q. In what capacity?
A. Chief Bookkeeper of the Comptroller's Office.
19 Q. How long have you been in that position?
A. Since 1896, about eleven years.
Q. Do you know something about the collection of the back taxes of 1874, 1875 and 1876 for the schools?
A. Yes, sir.
Q. Have you had occasions to look into that?
A. Yes, sir.
Q. Did you ever make any report to the Court, in conjunction with anybody else, in relation to those school taxes with Mr. Aitkens?
A. I believe I did.
Q. With Mr. Aitkens?
A. With Mr. Aitkens.
Q. And looked over that?
A. Yes, sir.
Q. Well, are there any more taxes of 1874, 1875 and 1876 due for the schools?
A. There are not practically any more collectible.
Q. No more which are collectible?
A. No, sir.
Q. There is no more?
A. No, sir.
Q. Now, during the year 1896 do you know how much, during

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the whole year, school taxes have been collected for the years 1874, 1875 and 1876?

A. I can tell you from this report which I made. That is my work.

Q. That is your work?

A. Yes, sir.

By Mr. ADAMS:

Q. Is that the Comptroller's report?

A. Yes, sir; the Comptroller's report. You want me to detail——

20 By Mr. LOUQUE: No. Just give me the total in the whole year.

A. Oh, in any particular year?

Q. Yes.

A. Well, in 1875, a dollar and ninety-five cents; for 1874 there was collected twenty-five cents.

Q. Have you got 1876 in there?

A. For 1876 we collected a dollar and forty-nine cents.

Q. Practically there is nothing more to collect?

A. Nothing more to collect.

Cross-examination.

By Mr. ADAMS:

Q. Mr. Font, is the City of New Orleans indebted in anywise at the present time to the School Board of the Parish of Orleans?

A. Not so far as I have been able to find from our books.

Q. Have you investigated the matter?

A. Yes, sir.

By Mr. LOUQUE:

Q. Is this a correct report of the Comptroller?

A. Yes, sir; I made it, and know it to be correct.

By Mr. LOQUE: I offer it in evidence.

Agreement.

It is agreed that the report of the Comptroller shall be used in the original in the case of appeal.

By Mr. LOUQUE: I shall have made reference in the testimony to where this Fisher case was decided.

By Mr. ADAMS: The record will show that.

By Mr. LOUQUE: It is reported in the 180th United States Reports, page 185.

21 By Mr. ADAMS: I want to make one objection to the whole evidence offered in the case. Counsel for the City of New Orleans now objects to all the evidence that has heretofore been offered in this case, for the reason that, as a condition precedent to the offer of any evidence whatever in this case, it was necessary for relators to show under Section 10 of Act 36 of 1873 that he took due

heed that sufficient revenue was provided at that time to satisfy the claims that the School Board is alleged to be obligated on, and Counsel for the City of New Orleans now moves the Court to strike out all of the evidence offered in this proceeding.

By the COURT: The Court rules that the objections urged go to the effect to be given to the testimony, and not to its admissibility, and declines to grant the motion requesting that the Court strike out the testimony.

By Mr. ADAMS: Counsel for the City of New Orleans reserves a bill.

(Case closed and continued for the testimony to be written out and for argument.)

TRANSCRIPT OF RECORD No. 64,646, MISS EDITH FAURIE vs. BOARD OF DIRECTORS OF CITY SCHOOLS OF NEW ORLEANS, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Petition.

Filed April 21st, 1901.

Civil District Court, Division "C."

No. 64646.

Miss E. A. FAURIE
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

The Honorable the Civil District Court for the Parish of Orleans:

The petition of Edith Faurie a citizen of the State of New York, and who resides in the City of New York:

22 Respectfully represents:

That your petitioner is the holder and owner of a number of school certificates, amounting in the aggregate to the sum of Nineteen thousand five hundred and ninety five 76/100 Dollars ($19,595.76) as more fully appears by the said certificates and a complete list thereof, hereto annexed and made part hereof;

That said certificates were issued to the School teachers of the City by the Board of School Directors of the City Schools, a corporation duly created by the laws of Louisiana and domiciled in the City of New Orleans, for work done and performed under contract by the said Board to teach the children in the City of New Orleans, attending the public schools;

That notwithstanding due demand, the said Board refuses to pay;

Wherefore petitioner prays that the Board of Directors of the City Schools of New Orleans, through E. B. Kruttschnitt, President thereof be cited hereto and after due proceedings, be condemned to pay petitioner the sum of Nineteen thousand five hundred and

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ninety-five 76/100 dollars ($19,595.76) with 5% interest per annum from judicial demand and costs of suit and petitioner prays for general relief &c.

(Signed) CHAS. LOUQUE, *Att'y.*

April 2nd, 1901.

List of School Certificates Annexed to and Made Part of Petition Filed April 2nd, 1901.

NEW ORLEANS, *March 5th,* 1901.

School certificates belonging to Miss E. A. Faurie:

Miss N. J. Kelly	Sept.	75	$54.	$13.98—	40.02	
Miss M. A. Boderich	"	"	54.	13.98—	40.02	
Miss L. Disemone	"	"	54.	13.98—	40.02	
Mrs. A. Ford	"	"	54.	13.98—	40.02	
Miss R. Harby	"	"	54.	13.98—	40.02	
Miss M. L. Francis	"	"	54.	13.98—	40.02	
Mrs. A. Plauche	"	"	54.	13.98—	40.02	
Miss A. McCord	"	"	54.	13.98—	40.02	
Miss L. Hutton	"	"	54.	13.98—	40.02	
Mr. O. E. Westerfield	"	"	54.	13.98—	40.02	
Miss E. Rief	"	"	54.	13.98—	40.02	
Mrs. C. Gould	Oct.	"	54.	13.98—	40.02	
Miss N. J. Kelly	"	"	54.	13.98—	40.02	
Mrs. G. McKnight	"	"	54.	13.98—	40.02	
23						
Miss N. Lee	Oct.	75	$54.	$13.98—	40.02	
Miss N. Schields	"	"	54.	13.98—	40.02	
Miss L. E. Lambourne	"	"	54.	13.98—	40.02	
Miss E. E. Vigers	Dec.	"	54.	13.98—	40.02	
Miss M. A. Sullivan	"	"	54.	13.98—	40.02	
Miss E. E. Lambourne	"	"	54.	13.98—	40.02	
Miss A. Thiel	"	"	54.	13.98—	40.02	
Miss J. Chivellon	Nov.	"	54.	13.98—	40.02	
Miss M. Clarkson	"	"	54.	13.98—	40.02	
Miss S. Evans	"	"	54.	13.98—	40.02	
Miss M. A. Jones	"	"	54.	13.98—	40.02	
						$1,000.50
Miss J. Benedict	"	"	90.	23.31—	66.69	
Miss M. R. Chevallin	"	"	90.	23.31—	66.69	
Mr. Ed. North	"	"	90.	23.31—	66.69	
Mr. C. Hunt	"	"	90.	23.31—	66.69	
Miss M. K. Hughes	"	"	90.	23.31—	66.69	
Miss M. J. O'Neill	"	"	90.	23.31—	66.69	
Miss E. B. Hunt	"	"	90.	23.31—	66.69	
Miss S. S. McEniry	"	"	90.	23.31—	66.69	
Miss M. M. Tank	"	"	90.	23.31—	66.69	
Mrs. H. Smith	"	"	90.	23.31—	66.69	

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Miss M. A. Cumberland	Sept.	"	90.	23.31— 66.69	
Mr. D. Rawlings	Dec.	"	84.	21.75— 62.25	
Miss M. H. Crafts	Nov.	"	84.	21.75— 62.25	
Miss S. M. Duffy	Sep.	"	84.	21.75— 62.25	
Miss M. H. Williams	Oct.	"	84.	21.75— 62.25	
Mrs. E. Cheneau	Sept.	"	84.	6.21— 17.79	
					$1,000.38
Amount forward					$2,000.88

24

Amount forwarded					$2,000.88
Mrs. L. M. Knox	Oct.	75	60.	15.54— 44.46	
Miss M. A. Murphy	Sept.	"	60.	15.54— 44.46	
Mr. Geo. Phister	Nov.	"	60.	15.54— 44.46	
Miss M. C. Dore	Sept.	"	60.	15.54— 44.46	
Mrs. S. Huth	Sept.	"	60.	15.54— 44.46	
Geo. Phister	"	"	60.	15.54— 44.46	
W. T. Richards	Nov.	"	60.	15.54— 44.46	
Mrs. O. Flowers	Sept.	"	60.	15.54— 44.46	
Mrs. M. J. Murphy	Sept.	"	48.	12.43— 35.57	
Mrs. F. S. Falorsi	"	"	48.	12.43— 35.57	
Mrs. L. R. Chevalleau	"	"	48.	12.43— 35.57	
Mrs. C. Hille	"	"	48.	12.43— 35.57	
Mrs. A. Smith	"	"	36.	9.32— 26.68	
Mrs. C. A. Miles	"	"	36.	9.32— 26.68	
Mrs. A. Piny	"	"	36.	9.32— 26.68	
Mrs. E. Doze	"	"	36.	9.32— 26.68	
Mrs. C. Lurgas	"	"	36.	9.32— 26.68	
Mrs. E. Maginnis	"	"	36.	9.32— 26.68	
E. Parkes	"	"	36.	9.32— 26.68	
Mrs. M. Rief	"	"	36.	9.32— 26.68	
Mrs. M. Caruthers	"	"	36.	9.32— 26.68	
Mrs. S. Campanel	Nov.	"	30.	7.77— 22.23	
Mrs. A. Blacknell	Sept.	"	30.	7.77— 22.23	
Miss M. L. Jenkins	"	"	54.	13.98— 40.02	
Miss M. Doze	"	"	54.	13.98— 40.02	
Miss C. Vaughn	"	"	54.	13.98— 40.02	
Mrs. C. Kelly	"	"	54.	13.98— 40.02	
Miss J. Kelly	"	"	54.	13.98— 40.02	
Miss A. E. Kearney	"	"	54.	13.98— 40.02	
Miss E. Gandolfi	"	"	54.	13.98— 40.02	
Miss R. T. Moore	"	"	54.	13.98— 40.02	
Miss E. S. Hughes					
					$1,142.72
Miss J. L. J. Barth	"	"	140.	36.26—103.74	
Mr. M. C. Jornan	"	"	140.	36.26—103.74	
Mr. B. Wayne	"	"	140.	36.26—103.74	
Mr. P. Graham	Nov.	"	140.	36.26—103.74	
Mrs. D. R. Miller	"	"	140.	36.26—103.74	
Mrs. G. Andry	"	"	140.	36.26—103.74	
Mr. J. L. J. Barth	"	"	140.	36.26—103.74	

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Mr. H. Dufilho	Oct.	"	140.	36.26—103.74	
Mr. P. Graham	Sept.	"	140.	36.26—103.74	
Mrs. K. C. McCann	Nov.	"	90.	23.31— 66.69	
					1,000.35
Mr. E. W. Rattigan	Dec.	74	10.	1.29— 8.71	
Miss A. Icard	Oct.	75	57.20	14.80— 42.40	
Mrs. A. Cassanova	Dec.	75	57.20	14.80— 42.40	
					93.51
					$4,237.46

25

Amount forward					4,237.46
Miss L. Requet	Nov.	75	140.	36.26—103.74	
Mr. P. Graham	Oct.	75	140.	26.26—103.74	
Mr. J. L. J. Barth	"	"	140.	36.26—103.74	
Mr. B. Wayne	"	"	140.	36.26—103.74	
L. M. Williams	Sept.	"	120.	31.08— 88.92	
Mrs. D. Newall	Dec.	"	120.	31.08— 88.92	
Miss F. Gordon	"	"	120.	31.08— 88.92	
Miss E. Lober	"	"	120.	31.08— 88.92	
Miss L. B. Wilder	Oct.	"	120.	31.08— 88.92	
Miss A. G. Pitkin	"	"	120.	31.08— 88.92	
Miss E. R. Hunt	Nov.	"	54.	13.98— 40.02	
Mr. C. Henderson	"	"	18.	4.66— 13.34	
					1,001.84
Mrs. G. Kelly	Oct.	74	45.	5.80— 39.20	
Mrs. G. Kelly	Nov.	"	45.	5.80— 39.20	
M. R. Burrow	Dec.	"	40.	5.16— 34.84	
Mr. J. Thumand	"	"	40.	5.16— 34.84	
Mrs. H. Daly	"	"	40.	5.16— 34.84	
Mrs. A. Wilson	"	76	54.	21.81— 32.19	
Miss K. A. Nugent	Nov.	"	54.	21.81— 32.19	
Miss L. Hutton	Dec.	"	54.	21.81— 32.19	
Miss K. A. Nugent	"	"	54.	21.81— 32.19	
Miss M. Boze	"	"	54.	21.81— 32.19	
Miss A. Ramos	"	"	54.	21.81— 32.19	
Miss L. Wiggins	Nov.	"	54.	21.81— 32.19	
Miss S. C. Williams	"	"	54.	21.81— 32.19	
Miss R. Fortune	Dec.	"	54.	21.81— 32.19	
Miss E. O'Hara	"	"	54.	21.81— 32.19	
Miss M. Curley	Nov.	"	54.	21.81— 32.19	
Miss L. M. Johnson	"	"	54.	21.81— 32.19	
Miss J. Chivillon	"	"	54.	21.81— 32.19	
Miss S. Sherlock	"	"	54.	21.81— 32.19	
Miss M. L. Francis	"	"	54.	21.81— 32.19	
Miss O. E. Westerfield	Oct.	74	58.50	7.54— 50.96	
Miss R. E. Chevallion	Nov.	75	48.	12.43— 35.57	
Miss N. Girandeau	"	"	46.	12.12— 34.68	
Miss N. Wilson	"	76	48.	19.63— 28.97	
Mrs. A. Falorsi	"	"	48.	19.39— 28.61	
Miss J. White	"	74	5.	.64— 4.36	
					848.92

Miss A. Williams	Oct.	"	11.65	1.50—	10.15	
M. J. Lacy	"	"	23.35	3.01—	20.34	
Miss K. Lee	Nov.	"	52.20	13.51—	38.69	
Mrs. A. Adams	Oct.	75	19.20	4.97—	14.23	
Mrs. A. Campanel	Oct.	"	15.	3.88—	11.12	
Mrs. C. Collerton	"	"	120.	31.08—	88.92	
Mrs. D. Murr	"	74	100.	12.90—	87.10	
A. S. Leche	"	"	166.65	21.49—	145.16	
						415.71
						$6,503.93

26

Amount forwarded						$6,503.93
Mrs. A. Miles	Oct.	74	30.	3.87—	26.13	
Miss M. C. Wharton	Nov.	"	47.50	6.12—	41.38	
Miss F. Collagani	Dec.	"	48.53	6.23—	42.12	
Miss A. Gannie	Oct.	"	61.50	7.93—	53.57	
Miss E. A. Jones	"	"	62.85	8.10—	54.75	
						217.95
Miss J. A. McAulty	Dec.	75	50.40	13.05—	37.35	
Alice W. Wilson	Sept.	"	50.40	13.05—	37.35	
Mrs. A. Plauche	Nov.	"	50.40	13.05—	37.35	
Miss J. A. McAnulty	"	"	50.40	13.05—	37.35	
Mrs. L. Segers	Sept.	"	50.40	13.05—	37.35	
Mrs. A. Hebert	Dec.	"	52.20	13.52—	38.68	
Miss Ida Monroe	Nov.	"	52.50	13.52—	38.68	
Miss C. Campaign	Sept.	"	52.20	13.51—	38.69	
Miss A. L. Fotton	Nov.	"	52.20	13.51—	38.69	
Mrs. M. Johnson	Nov.	"	14.40	3.73—	10.67	
" " "	Dec.	"	14.40	3.73—	10.67	
" " "	Sept.	"	14.40	3.72—	10.68	
Mrs. M. A. Batiste	"	"	14.40	3.72—	10.68	
Edmond Jones	"	"	15.	3.88—	11.12	
Wm. Washington	"	"	15.	3.88—	11.12	
John Lewis	"	"	15.	3.88—	11.12	
Johnson Lewis	"	"	15.	3.89—	11.11	
M. Bradley	Dec.	"	18.	4.66—	13.34	
Mrs. R. Wheeler	Nov.	"	18.	4.66—	13.34	
Mrs. C. Duplessis	Sept.	"	18.	4.66—	13.34	
Mrs. M. Bradley	Nov.	76	18.	7.27—	10.73	
Mrs. M. Bradley	Dec.	"	18.	7.27—	10.73	
Mrs. C. Smith	Sept.	75	19.20	4.97—	14.23	
Mrs. C. Munford	"	"	19.20	4.97—	14.23	
Mrs. A. Vanderpool	"	"	19.20	4.97—	14.23	
Mrs. M. Mertz	"	"	19.20	4.97—	14.23	
Mr. R. Sams	"	"	24.	6.21—	17.79	
Mrs. C. Kating	"	"	24.	6.21—	17.79	
Mr. S. Sams	Dec.	74	20.	2.58—	17.42	
Mrs. E. Green	"	"	20.	2.58—	17.42	
M. Houseman	"	"	20.	2.58—	17.42	

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Mrs. C. Cheneau	"	"	20.	2.58— 17.42	
" " "	Oct.	"	20.	2.58— 17.42	
James Graig	Dec.	"	20.	2.58— 17.42	
D. McNamara	Sept.	75	25.	6.47— 18.53	
Elias Porter	Nov.	"	25.	6.48— 18.52	
D. McNamara	"	"	25.	6.48— 18.52	
Mrs. S. Campanel	"	76	30.	12.12— 17.88	
					760.61
					$7,482.49

27

Amount forwarded					$7,482.49
Mrs. S. Campanel	Dec.	76	30.	12.12— 17.88	
Mrs. H. Gastan	"	75	30.	7.77— 22.23	
Mrs. M. Douglas	Nov.	75	30.	7.77— 22.23	
A. Wilson	"	"	30.	7.77— 22.23	
Mrs. A. Caldwell	"	"	30.	7.77— 22.23	
Mrs. F. Gray	"	"	36.	9.32— 26.68	
Mrs. M. Reif	"	"	36.	9.32— 26.68	
Mrs. M. Caruthers	"	"	36.	9.32— 26.69	
Mrs. M. White	"	"	36.	9.32— 26.69	
Miss L. M. Murphy	Dec.	"	19.80	5.13— 14.67	
Mrs. A. Marks	Nov.	76	19.20	7.45— 11.45	
Miss N. Gordon	Sept.	75	1.80	.47— 1.33	
					240.97
Miss C. Hester	Dec.	"	66.	17.09— 48.91	
Miss E. A. Jones	"	"	66.	17.09— 48.91	
Mrs. J. A. Trott	"	"	66.	17.09— 48.91	
Miss A. Ayer	"	"	66.	17.09— 48.91	
Mrs. J. Allen	"	"	66.	17.09— 48.91	
Miss C. Kennedy	"	"	66.	17.09— 48.91	
Miss K. Divine	"	"	66.	17.09— 48.91	
Miss H. Schwartz	"	"	66.	17.09— 48.91	
Miss E. F. Harcourt	Sept.	"	66.	17.09— 48.91	
Miss M. McElligott	Nov.	"	90.	23.31— 66.69	
Miss L. Purcell	Oct.	74	75.	9.67— 65.33	
T. J. Flanagan	"	"	76.95	9.92— 67.03	
Miss S. Schreiver	"	"	65.	8.38— 56.62	
Miss E. F. Haricourt	"	"	41.65	5.37— 36.28	
Mrs. M. Chefer	"	"	30.	8.87— 21.13	
Mrs. L. Batiste	Dec.	"	25.	3.22— 21.78	
Mrs. A. Vanderpool	"	"	16.	2.06— 13.94	
Miss A. Chervien	Nov.	75	17.80	4.61— 13.19	
Miss A. Kearney	"	"	16.80	4.35— 12.45	
Miss N. Harhtorn	Sept.	"	22.40	5.80— 16.60	
James Graig	"	"	20.	5.18— 14.82	
Miss M. E. Grice	Dec.	76	25.20	10.18— 15.02	
Miss M. J. Alexander	Nov.	74	19.45	2.50— 16.95	
Mrs. E. Chenean	Dec.	75	25.	6.47— 18.53	
Miss C. Keppard	Oct.	74	71.50	9.22— 62.28	
Miss S. Williams	"	74	50.	6.45— 43.55	

POOR

Miss M. Falorsi	Nov.	76	15.	6.06—	8.94	
Miss A. Chinan	Dec.	75	9.	2.33—	6.67	
Miss N. B. Hathorn	Nov.	75	8.80	2.27—	6.53	
Miss N. B. Hathron	Dec.	"	6.75	1.74—	5.01	
Mrs. E. V. Fowler	Oct.	74	15.	1.93—	13.07	
Mrs. A. R. Van Wagner	Nov.	25	1.80	.45—	1.35	
Miss C. Kenner	Sept.	75	1.80	.46—	1.34	
Miss E. C. Colton	Dec.	76	1.80	.72—	1.08	
						1,046.37
						$8,769.83

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Amount forwarded						$8,769.37
Miss E. Bellouget	Sept.	75	54.	13.98—	40.02	
Miss H. Hamilton	"	"	48.	12.43—	35.57	
Miss M. A. Riley	"	"	90.	23.31—	66.69	
Miss A. Jenks	"	"	54.	13.98—	40.02	
Mrs. M. Pinckney	"	"	36.	9.32—	26.68	
Miss A. Hubert	"	"	54.	13.98—	40.02	
Mr. N. B. Games	"	"	54.	13.98—	40.02	
Miss R. Fortuen	"	"	54.	13.98—	40.02	
Mrs. A. Ringle	"	"	36.	9.32—	26.68	
Miss K. Toole	"	"	66.	17.09—	48.91	
Miss J. O'Connor	"	"	90.	23.31—	66.69	
Miss M. Richardson	"	"	31.50	8.15—	23.35	
Miss C. R. Watson	"	"	90.	23.31—	66.69	
Mr. Elias Porter	"	"	12.50	3.23—	9.27	
Miss J. Mayberry	"	"	90.	23.31—	66.69	
Miss E. T. Hayden	"	"	90.	23.31—	66.69	
A. Hickman	"	"	52.52	13.51—	38.69	
F. Gordon	"	"	120.	31.08—	88.92	
G. Cooper	"	"	54.	13.98—	40.02	
D. R. Rawlings	"	"	84.	21.75—	62.25	
Mr. G. Andry	"	"	140.	36.26—	103.74	
Miss L. Lynch	"	"	66.	17.09—	48.91	
Mrs. E. Townsend	"	"	54.	13.98—	40.02	
Miss E. Hitariot	"	"	66.	17.09—	48.91	
Miss M. E. Chevalie	"	"	90.	23.31—	66.69	
Mrs. S. M. Clark	"	"	75.	19.42—	55.58	
Mrs. C. Vinet	"	"	25.	6.48—	18.52	
Miss A. Lewis	"	"	54.	13.98—	40.02	
Mrs. M. L. Hampson	Oct.	"	66.	17.09—	48.91	
Mr. R. Burrow	"	"	40.	10.36—	29.64	
Miss Ida Monroe	"	"	54.	13.98—	40.02	
Miss M. Mulligan	"	"	68.	17.09—	48.91	
Miss M. Ferguson	"	"	66.	17.09—	48.91	
Miss S. C. Williams	"	"	54.	13.98—	40.02	
Miss A. Twomey	"	"	54.	13.98—	40.02	
Miss L. Bidd	"	"	54.	13.98—	40.02	
Mrs. E. F. Stevens	"	"	90.	23.31—	66.69	
Miss A. Williams	"	"	54.	13.98—	40.02	

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Miss L. Hutton	"	"	54.	13.98—	40.02	
Mrs. K. Stanislaus	"	"	54.	13.98—	40.02	
Mr. E. J. Edmonds	"	"	160.	41.44—	118.56	
Miss M. Littrell	"	"	54.	13.98—	40.02	
Mrs. M. E. McDonald	"	"	43.20	11.18—	32.02	
Miss M. L. Boree	"	"	87.	22.53—	64.47	
Miss R. McErney	"	"	66.	17.09—	48.91	
Miss K. Divine	"	"	66.	17.09—	48.91	
						2,232.37
						11,001.74

29

Amount forwarded $11,001.74

Miss E. Lynch	Oct. 74	50.	6.45—	43.55	
" " "	Nov. "	40.65	6.01—	54.64	
" " "	Dec. "	50.	6.45—	43.55	
" " "	Aug. 75	14.17	3.67—	10.50	
" " "	Sept. "	52.20	13.51—	38.69	
" " "	Oct. "	54.	13.98—	40.02	
" " "	Nov. "	54.	13.98—	40.02	
" " " (pd. 18%)	Dec.	52.20	13.51—	38.69	
" " "	Oct. 76	44.30	17.89—	26.41	
" " "	Nov. "	54.	21.81—	32.19	
" " "	Dec. "	54.	21.81—	32.19	
					380.45
Miss K. A. Nugent	Oct. 74	50.	6.45—	43.55	
Miss C. Blanc	Oct. 74	50.	6.45—	43.55	
Miss E. M. Webb	" "	50.	6.45—	43.55	
Miss M. G. Spooner	" "	50.	6.45—	43.55	
Miss A. N. Nahan (pd. 18%)	" 76	77.10	31.14—	45.96	
Miss M. Chambers	" "	73.80	29.81—	43.99	
Miss E. Peniston	Nov. "	54.	21.81—	32.19	
Miss E. Dolin	" "	54.	21.81—	32.19	
Miss J. Kiley	" "	54.	21.81—	32.19	
Miss L. Becher	" "	54.	21.81—	32.19	
Miss E. Shaw	" "	54.	21.81—	32.19	
Miss B. J. Golden	" "	54.	21.81—	32.19	
Miss A. L. Beecher	" "	66.	26.66—	39.34	
Miss E. Hilariot	" "	66.	26.66—	39.34	
Miss A. Cassanova	" "	58.30	23.55—	34.75	
Miss S. M. Thompson	" "	90.	36.36—	53.64	
Miss A. Lafabue	" "	54.	21.81—	32.19	
Miss M. J. Giroux	Dec. "	54.	21.81—	32.19	
Miss A. Laffargue	" "	54.	21.81—	32.19	
W. T. Richards	" "	60.	24.24—	35.76	
Miss A. L. Garret	" "	120.	48.48—	71.52	
Miss R. Heron	" "	36.	14.54—	21.46	
Miss L. V. Miller	" "	66.	26.66—	39.34	
Miss L. V. Miller	" "	63.80	25.77—	38.03	
					927.04

POOR

Mr. M. Jovain		Dec.	74	125.	16.12—108.88	
Miss R. McDonald		Oct.	75	90.	23.31— 66.69	
"		Nov.	75	90.	23.31— 66.69	
"		Dec.	"	90.	23.31— 66.69	
"		Oct.	74	83.35	10.75— 72.60	
"		Nov.	"	83.35	10.75— 72.60	
"		Dec.	"	83.35	10.75— 72.60	
"		Nov.	76	90.	36.36— 53.64	
"		Dec.	76	90.	36.36— 53.64	
						634.03
						$12,943.26

30

Amount forwarded $12,943.26

Miss M. Dovenshire		Dec.	75	90.	23.31— 66.69	
" " "		Oct.	74	83.35	10.75— 72.60	
" " "		Nov.	74	83.35	10.75— 72.60	
" " "		Sept.	75	90.	23.31— 66.69	
" " "		Nov.	96	33.	13.33— 19.67	
" " "		"	75	90.	23.31— 66.69	
" " "		Oct.	"	90.	23.31— 66.69	
" " "		Nov.	"	54.	13.98— 40.02	
" " "		Oct.	"	54.	13.98— 40.02	
" " "		Dec.	"	54.	13.98— 40.02	
" " "	pd. 18%	Oct.	76	54.	27.60— 26.40	
" " "		Dec.	"	54.	21.81— 32.19	
" " "		Nov.	"	54.	21.81— 32.19	
" " "		Dec.	74	83.35	10.75— 72.60	
" " "		"	76	42.	16.96— 25.04	
" " "	pd. 18%	Oct.	"	72.	36.80— 35.20	
" " "		Aug.	75	66.70	46.69— 20.01	
	pd. ½ & 20%					
						795.32
Miss N. Durham		"	75	44.	27.18— 16.82	
Mrs. H. M. Wells		Dec.	76	63.80	25.77— 38.03	
Miss M. V. McCarty		Dec.	74	125.	16.12—108.88	
Miss M. O. Carter		"	74	65.	8.38— 56.62	
Miss L. Pittfield		"	"	50.	6.45— 43.55	
" " "		Nov.	"	50.	6.45— 43.55	
Mrs. E. F. Harcourt		Dec.	"	50.	6.45— 43.55	
" " "		Nov.	"	50.	6.45— 43.55	
Miss M. O. Carter		"	74	65.	8.38— 56.62	
" " "		Oct.	"	65.	8.38— 56.62	
						507.79
Miss Marie Sassionet		Nov.	74	83.35	10.75— 72.60	
" "		Dec.	"	83.35	10.75— 72.60	
" "		Sept.	75	90.	23.31— 66.69	
" "		Oct.	"	90.	23.31— 66.69	
" "		Nov.	"	90.	23.31— 66.69	
" "		Dec.	"	80.	20.72— 59.28	
" "		Nov.	76	90.	36.36— 53.64	
" "		Dec.	76	78.	31.51— 46.49	

COPY

	Louise	"	Nov.	74	10.	1.29— 8.71	
	"	"	Dec.	"	12.50	1.61— 10.89	
	"	"	Nov.	75	17.60	7.11— 10.49	
	"	"	"	75	2.20	.56— 1.64	
	"	"	Dec.	76	12.00	4.84— 7.16	
	"	"	"	75	22.40	5.80— 16.60	
							560.17
							$14,806.54
31							
	Amount forwarded						$14,806.54
	Miss M. Cabere		Oct.	75	120.		
	"	"	Oct.	74	100.		
	"	"	Dec.	74	100.		
	"	"	Nov.	"	100.		
	"	"	"	75	120.		
							540.00
	Mrs. E. Clark		Nov.	74	100.	12.90— 87.10	
	Mrs. E. Clark		Dec.	74	100.	12.90— 87.10	
	"	"	Nov.	75	94.	24.34— 69.36	
	"	"	Dec.	"	94.	24.34— 69.66	
	"	"	Nov.	76	94.	37.97— 56.03	
	"	"	Dec.	76	114.80	46.37— 68.43	
							437.98
	Miss E. Swettenham		Oct.	74	38.53	4.94— 33.41	
	"	"	Nov.	"	50.00	6.45— 43.55	
	"	"	Dec.	"	50.	6.45— 43.55	
	"	"	"	75	66.	17.09— 48.91	
	"	"	Nov.	"	66.	17.09— 48.91	
	"	"	Oct.	"	66.	17.09— 48.91	
	"	"	Sept.	"	66.	17.09— 48.91	
	"	"	Dec.	76	66.	26.66— 39.34	
	"	"	Nov.	"	66.	26.66— 39.34	
	"	" pd. 18%	Oct.	76	66.	33.74— 32.26	
	"	" pd. ½	Aug.	"	40.	29.47— 10.53	
							437.62
	Miss L. Prest		Dec.	74	75.	9.67— 65.33	
	"		Nov.	74	75.	9.67— 65.33	
	"		Dec.	75	66.	17.09— 48.91	
	"		Nov.	75	66.	17.09— 48.91	
	"		Oct.	75	66.	17.09— 48.91	
	"		Dec.	76	67.60	27.31— 40.29	
	"		Nov.	76	66.	26.66— 39.34	
	"	pd. 18%	Oct.	76	59.40	30.36— 29.04	
	"	pd. ½ & 29%	Aug.	76	60.	44.21— 15.79	
							401.85
	Miss S. H. Evans		Dec.	78	31.90	10.65— 21.25	
	Miss S. Shelly		Nov.	76	43.20	17.45— 25.75	
	Miss M. Gordon		Oct.	74	30.	3.87— 26.13	
	Miss P. Phacard		Dec.	78	40.	10.35— 26.65	
	Miss M. J. Dorman		"	76	53.10	21.45— 31.65	
	"		Nov.	"	50.40	20.36— 30.04	

POOR

Miss H. O. White	Dec. 78	54.	18. —	32.	
Miss Clare Lathorp	Nov. 76	52.20	21.08—	31.12	
Miss M. K. Hablet	Dec. 76	78.	31.51—	46.49	
Miss J. Kelty	Nov. 75	84.	21.75—	62.25	
E. W. Washington	Nov. 75	60.	15.54—	44.46	
Miss A. Gainenne	" 76	84.	33.93—	50.07	
"	Dec. 75	84.	21.75—	62.25	
Miss M. E. Tank	Dec. 76	90.	36.36—	53.64	
					$543.75
					$17,167.14

32

Amount forwarded					$17,167.14
Miss M. E. Tank	Nov. 76	90.	36.36—	53.64	
" 18% pd.	Oct. "	90.	46.01—	43.99	
Mrs. S. A. Shilby	" 74	4.35	.56—	3.79	
Miss M. L. Kneas	Nov. "	83.35	10.75—	72.60	
Miss L. Shilby	Oct. "	8.65	1.11—	7.54	
Miss A. Jenks	Nov. 76	54.	21.81—	32.19	
Miss M. Marshall	Oct. 74	11.65	1.50—	10.15	
Miss A. Jenks	Dec. 76	54.	21.81—	32.19	
Miss M. A. King	Oct. 74	39.20	5.05—	34.15	
"	Dec. "	3.35	.43—	2.92	
"	Sept. 75	30.	7.77—	22.23	
"	Oct. "	8.08	2.27—	6.53	
"	Dec. 76	4.	1.61—	2.39	
"	Nov. 74	31.65	4.08—	27.57	
Mrs. W. King	Dec. "	40.	5.16—	34.84	
"	Nov. "	40.	5.16—	34.84	
Miss J. A. Mayberry	Nov. 75	90.	23.31—	66.69	
"	Nov. 76	90.	36.36—	53.64	
" 18% pa'd	Oct. 76	90.	46.01—	43.99	
Miss E. Tomlin	Oct. 75	54.	13.98—	40.02	
"	Nov. 75	54.	13.98—	40.02	
"	Dec. 55	54.	13.98—	40.02	
"	Dec. 74	50.	6.45—	43.55	
"	Nov. 74	49.15	6.34—	42.81	
Miss A. Liddy	Dec. 75	54.	13.98—	40.02	
"	Oct. 55	54.	13.98—	40.02	
"	Nov. "	54.	13.98—	40.02	
"	Sept. "	54.	13.98—	40.02	
"	Oct. 74	14.	1.80—	12.20	
"	Dec. 78	33.	11. —	22.	
					887.85
Miss L. R. Chevollau					
"	Nov. 75	48.	12.45—	35.55	
"	" 76	48.	19.39—	28.61	
"	Dec. 76	48.	19.39—	28.61	
Miss C. Fitzgerals	Nov. 74	40.	5.16—	34.84	
"	Dec. 74	40.	5.16—	34.84	
"	Sept. 75	48.	12.43—	35.57	
"	Oct. "	48.	12.43—	35.57	

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"	Nov.	"	48.	12.43—	35.57	
"	Dec.	"	48.	12.43—	35.57	
"	Nov.	"	48.	19.39—	28.61	
"	Dec.	76	48.	19.39—	28.61	
Miss M. A. Kilgrove	Sept.	75			120.	
Miss M. J. Dowty	Oct.	74			50.	
						531.95
						$18,586.94

33

Amount forwarded						$18,586.94
Mrs. M. Richardson	Nov.	74	26.25	3.38—	22.87	
"	Dec.	"	26.25	3.38—	22.87	
"	Nov.	76	31.59	12.72—	18.87	
"	Dec.	"	31.59	12.72—	18.87	
"	"	75	31.50	8.15—	23.35	
"	Oct.	"	31.50	8.15—	23.35	
Miss B.	Nov.	"	31.50	8.15—	23.35	
" "	Nov.	"	9.	3.36—	5.64	
" "	Dec.	75	9.70	2.51—	7.19	
" "	Nov.	"	12.	3.10—	8.90	
Miss L. Faust	"	74	50.	6.45—	43.55	
"	Dec.	"	50.	6.45—	43.55	
"	Oct.	75	43.20	11.18—	32.02	
"	Sept.	"	54.	13.98—	40.02	
"	Dec.	"	54.	13.98—	40.02	
"	Nov.	76	54.	21.81—	32.19	
"	Dec.	"	54.	21.81—	32.19	
" 18% pd.	Oct.	76	54.	27.58—	26.42	
Miss J. Fitzgerals	Sept.	75	66.	17.09—	48.91	
"	Oct.	"	66.	17.09—	48.91	
"	Nov.	"	66.	17.09—	48.91	
"	Dec.	"	66.	17.09—	48.91	
"	"	"	66.	17.09—	48.91	
"	Nov.	"	66.	26.66—	39.34	
Mr. G. Andry	"	"		26.66—	39.34	
					140.	
						879.54
						$19,466.48
Miss M. McCarthy	Dec.	78	33.	11. —	22.	
Miss J. U. Benedict	Nov.	76	90.	36.36—	53.64	
" "	Dec.	76	90.	36.36—	53.64	
						129.28
						$19,595.76

POOR

34 *Answer.*

Filed April 20th, 1901.

Civil District Court, Div. —.

No. 64646.

Miss EDITH FAURIE
vs.
BOARD OF SCHOOL DIRECTORS OF CITY OF NEW ORLEANS.

Now comes the Board of School Directors of the City of New Orleans, through undersigned counsel, made defendant herein, and for answer to the petition of plaintiff, pleads the general issue.

Wherefore defendant prays to be hence dismissed with costs, and for all further and general relief.

(Signed) ANDREW GIRAULT,
Ass't City Att'y.

Judgment.

Rendered May 9th, 1901.

Judgment.

Civil District Court, Parish of Orleans, Division "C."

No. 64646.

Miss E. A. FAURIE
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

This case came up for trial on this day.

Present: Chas. Louque, Esq., for plaintiff. Defendant absent and not represented.

And, after hearing pleadings, evidence and counsel, the Court considering the law and the evidence to be with plaintiff and against the defendant and for the reasons orally assigned in open court.

It is ordered, adjudged and decreed that plaintiff, Miss Edith A. Faurie, have judgment and recover of defendants, the Board of Directors of the City Schools of New Orleans, the sum of nineteen thousand two hundred and forty eight 40/100 dollars with five per cent per annum, interest, from judicial demand, until paid and for all costs of suit.

Judgment read and rendered in open court, May 9, 1901.

Judgment signed in open Court May 16th, 1901.

(Signed) JOHN ST. PAUL, *Judge.*

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35 TRANSCRIPT OF RECORD No. 39977, FISHER VS. SCHOOL BOARD, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Petition.

Filed September 10th, 1893.

Civil District Court, Division "A."

No. 39997.

Mrs. M. M. FISHER
vs.
SCHOOL DIRECTORS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Mrs. M. M. Fisher born Blackadder duly authorized by her husband M. M. Fisher, who appears herein for said purpose and joins his said wife both citizens of the Kingdom of Spain and residing in the Island of Cuba:

Respectfully represents:

That your petitioner is the owner and holder of a number of school certificates due to her by the Board of School Directors for this City, a corporation duly created by the laws of Louisiana and a citizen of said State:

That the said certificates have been duly transferred to your petitioner by the original holder thereof, as more fully appears by the certificates duly endorsed hereto annexed and made part hereof:

That the said certificates were issued to the original owner for work done in teaching in the schools of this City, as stated on the face thereof, for the years 1878, and previous years:

That the same are made payable out of the school tax levied by the City of New Orleans prior to 1879;

That the same are made payable out of the school tax levied by the City of New Orleans prior to 1879;

36 That the said certificates amount to the sum of Seven thousand five hundred and seventy 90/100 Dollars;

Petitioner avers amicable demand and failure to pay:

Wherefore petitioner prays that the Board of School Directors of the City Schools of the City of New Orleans be cited hereto and after due proceedings had that judgment be rendered in favor of petitioner and against the School Board as above, for the sum of Seven thousand five hundred and seventy 90/100 Dollars with legal interest from judicial demand and all costs of suit and petitioner prays for general relief &c.

(Signed) CHAS. LOUQUE.
R. E. POMES.

POOR

Answer.

Filed September 11th, 1893.

Civil District Court for the Parish of Orleans.

No. 39997.

Mrs. M. M. FISHER
vs.
BOARD OF SCHOOL DIRECTORS.

Now into this Honorable Court comes the Board of Directors of the City Schools and for answer to plaintiff's petition denies all and singular the allegations thereof except in so far as may hereinafter be admitted.

Further answering defendant specially denies that the alleged certificates were ever issued by lawful authority or that they have any validity, or that plaintiff is the owner of any of said alleged certificates or that the same has ever been transferred to her.

Wherefore defendant prays that plaintiff's demand be rejected with costs.

(Signed) HORACE D. DUFOUR AND
HY. RENSHAW,
Ass't. City Att'ys.

[Stamp.]

37 *Judgment.*

Civil District Court, Parish of Orleans, Division "A."

No. 39997.

Mrs. M. M. FISHER
vs.
BOARD OF SCHOOL DIRECTORS.

This cause came on the 22nd day of November, 1894, for trial.

Present: Louque and Pomes for the plaintiff, and E. A. O'Sullivan and Horace Dufour for the Defendant.

When after hearing the evidence and the arguments, of counsel, considering that the law and the evidence is in favor of petitioner and against the defendant it is ordered, adjudged and decreed that there be judgment in favor of petitioner Mrs. M. M. Fisher, and against the Board of School Directors for the City of New Orleans, for the sum of Seven thousand four hundred and one 69/100 dollars with costs of suit and five per cent. interest from judicial demand; i. e. payable out of the taxes levied by the City of New Orleans prior to 1879, and on delivery of the school warrants herein sued upon.

Judgment rendered December 21, 1894.

Judgment signed January 4th, 1895.

(Signed) T. C. W. ELLIS, *Judge.*

COPY

Petition to Revive.

Filed November 15th, 1904.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of John Fisher herein acting as the Natural Tutor of his minor children and for himself:

Respectfully represents:

That on the 22nd of November, 1894, judgment was rendered in this Honorable Court in favor of Mrs. M. M. Fisher and
38 against the Board of Directors of the City Schools under No. 39997 of the Docket of this Hon. Court on the 22nd of November 1894.

That said judgment is about being prescribed and your petitioner desires to revive same;

Wherefore petitioner prays that the Board of Directors of the City Schools, through Andrew H. Wilson, President, be cited hereto and after due proceedings that judgment be rendered in favor of petitioner reviving the judgment herein rendered with costs and interest, as follows, to wit: It is ordered that the Board of Directors of the City Schools be condemned to pay petitioner seventy four hundred and one 69/100 dollars with costs and 5% interest from judicial demand, and petitioner prays for general relief etc.

(Signed) CHAS. LOUQUE, *Att'y.*

Nov. 14, 1904.

Judgment.

Division "A," Civil District Court for the Parish of Orleans.

No. 39997.

M. M. FISHER
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS.

Judgment.

This case was called up for trial this day, Chas. Louque Esq., Att'y for pl'ff, F. K. B. Thomas, Esq., for defendant, and after hearing pleadings, evidence and counsel, the law and evidence being in favor of plaintiff.

It is ordered, adjudged and decreed, that there be judgment in favor of plaintiff, reviving the judgment rendered herein Dec. 21st, 1894, and signed January 4th, 1895, and condemning the defendant Board of School Directors of the City of New Orleans, to pay to Mrs. M. M. Fisher, plaintiff, the sum of seventy four hundred and one 09/100 Dollars and costs, with 5% per annum from judicial demand until paid, payable out of the taxes levied by the City of New

POOR

Orleans, prior to 1879, and on delivery of the School War-
39 rants herein sued for.

Judgment read and rendered in open Court May 23rd, 1905.

Judgment signed in open Court May 29th, 1905.

(Signed) T. C. W. ELLIS, *Judge.*

TRANSCRIPT OF RECORD No. 55127, PETER JOHNSON vs. BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Petition.

Filed December 14, 1897.

Civil District Court, Division "C."

No. 55127.

PETER JOHNSON
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Peter Johnson, a resident of this City with respect represents:

That he is the holder and owner of eleven (11) certain school certificates, all hereto annexed as part hereof, and amounting to the sum of two hundred and forty dollars ($240.00) upon which there has been paid the sum of sixty seven and 55/100 Dollars, leaving still due and owning of the principal the sum of One hundred and seventy two and 45/100 dollars, said certificates being in detail, as follows, and all being payable to Philip Draub for rent of the Greenville School House for the Months hereafter stated, and being by him endorsed in blank to wit:

40

July 5/77	$25.00 for Aug., 75,	14.79	Paid on Account
July 13/77	25.00 for Oct., 74,	3.22	
July 13/77	25.00 for Nov., 74,	3.22	
July 13/77	25.00 for Dec., 74,	3.22	
July 13/77	20.00 for Sept., 75,	5.18	
July 13/77	20.00 for Oct., 75,	5.18	
July 13/77	20.00 for Dec., 75,	5.18	
July 13/77	20.00 for Nov., 75,	5.18	
July 13/77	20.00 for Oct., 76,	6.22	
July 13/77	20.00 for Nov., 76,	8.08	
July 13/77	20.00 for Dec., 76,	8.08	
	$240.00	$67.55	

COPY

Leaving a balance due as aforesaid, of $172.45;

That said certificates were issued by the Board of Directors of the City School of New Orleans, a corporation duly created by law for rent of school houses, and are payable out of the school taxes levied by the City of New Orleans prior to the year 1879.

That notwithstanding due demand, said school Board refuses to pay same.

Wherefore, petitioner prays that the said Board of Directors of the City Schools of New Orleans, through its President E. B. Kruttschnitt or other proper officer, may be duly cited to appear and answer this petition, and that in due course of law there may be judgment herein in favor of petitioner and against the said Board of Directors of the City Schools of New Orleans, for the said sum of One hundred and seventy two and 45/100 dollars with legal interest from the date of each certificate, and costs of suit; and that said certificates be made payable our of the school taxes levied by the City of New Orleans prior to the year 1879.

And he prays for general relief.

(Signed) DINKELSPEIL & HART, *Att'ys.*

Answer.

Filed January 3, 1898.

Civil District Court, Division "B."

No. 55127.

PETER JOHNSON

vs.

BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

41 Now into Court comes the defendant herein, and for answer to plaintiff's petition deny all and singular the allegations in said petition contained.

Wherefore defendants pray to be hence dismissed with their costs. And for general relief.

(Signed) JAMES McLAUGHLIN,
Ass't City Attorney.

Judgment.

Civil District Court, Parish of Orleans, Division "C."

No. 55127.

PETER JOHNSON

vs.

BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE CITY OF NEW ORLEANS.

Judgment.

This case came up for trial on this day.

Present: Messieurs Dinkelspiel & Hart, for plaintiff.

" J. J. McLaughlin, Esq., for defendants.

POOR

And after hearing pleadings, evidence and counsel, as well as the remittiter herein entered by plaintiff and against the defendant and for the reasons orally assigned in open Court on this day,

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff Peter Johnson, and against the defendants the Board of Directors of the City Schools of New Orleans for the sum of one hundred and sixty-one and 20/100 dollars, with all costs of suit.

Judgment rendered April 27th, 1899.

Judgment signed May 3rd, 1899.

(Signed) JOHN ST. PAUL, *Judge.*

42 TRANSCRIPT OF RECORD No. 55115, H. ABRAHAM & SON vs. BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Petition.

Filed Dec. 13, 1897.

Civil District Court, Division "E."

No. 55115.

H. ABRAHAM & SON

vs.

BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of H. Abraham & Son, a commercial firm of this City, composed of Henry Abraham and Jacob H. Abraham,

With respect represents:—

That your petitioners are the holders and owners of fifteen certain school certificates, all hereto annexed and made part hereof and amounting to eleven hundred and fifty dollars, upon which there has been paid the sum of one hundred and forty eight and 32/100 Dollars, leaving still due and owing to the principal the sum of one thousand and one 68/100 dollars; said certificates being in detail as follows:

6th Dist.	Oct.	4/74	fav.	Miss K. Divine	$50.00	less	State	por.	pd.	$6.45
Do.	Nov.	5/75	"	Mrs. L. Williams	$125	"	"	"	"	16.12
Do.	Nov.	6/74	"	Mr. J. Weber	$125	"	"	"	"	16.12
Do.	Nov.	6/74	"	Miss M. Meyers	$50	"	"	"	"	6.45
Do.	Nov.	7/74	"	Miss A. Twomey	$50	"	"	"	"	6.45
Do.	Nov.	7/74	"	Miss Whitaker	$50	"	"	"	"	6.45
Do.	Nov.	7/74	"	" A. E. Kearney	$60	"	"	"	"	7.74
Do.	Nov.	18/74	"	Mr. J. B. Flynn	$125	"	"	"	"	16.12
Do.	Nov.	21/74	"	Miss M. A. Porter	$50	"	"	"	"	6.45
Do.	Dec.	5/74	"	" E. B. Brown	$50	"	"	"	"	6.45
Do.	Dec.	18/74	"	" A. Manau	$65	"	"	"	"	8.38
Do.	Jan.	17/75	"	" M. Perez	$50	"	"	"	"	6.45
Do.	Feb.	4/75	"	Mr. Jacob Thurance	$50	"	"	"	"	6.45
Do.	Feb.	18/75	"	Miss E. S. Rossner	$125	"	"	"	"	16.12
Do.	Jun-	19/75	"	W. M. Taylor	$125	"	"	"	"	16.12

R COPY

That said certificates were issued by the Board of Directors of the City Schools of New Orleans, a corporation duly created by law, for services rendered by the various parties whose names are
43 mentioned in the certificates, and are made payable out of the school taxes levied by the City of New Orleans prior to the year 1879; that notwithstanding due demand said school board refuses to pay same.

Wherefore, petitioners pray that the said Board of Directors of the City Schools of New Orleans, through its President E. B. Kruttschintt, or other proper officer, may be duly cited to appear and answer this petition, and after due proceedings had petitioner- do have judgment in their favor and against the said Board of School Directors of the City Schools of New Orleans, for the said sum of one thousand and one and 68/100 dollars with legal interest thereon from date of each certificate until paid, and costs of suit; that said judgment be made payable out of the school taxes levied by the City of New Orleans prior to the year 1879.

And petitioners pray for general relief.

(Signed) DINKELSPEIL & HART.

Answer.

Filed January 3, 1898.

Civil District Court, Division "E."

No. 55115.

H. ABRAHAM & SON

vs.

BOARD OF DIRECTORS OF THE CITY SCHOOLS OF THE CITY OF NEW ORLEANS.

Now into this Court come the defendants herein, and for answer to plaintiff's petition deny all and singular the allegations therein contained.

Wherefore defendants pray to be hence dismissed with their costs,

And for general relief.

(Signed) JAMES McLAUGHLIN,
Ass't City Attorney.

44 *Judgment.*

Judgment.

No. 55115.

H. ABRAHAM & SON

vs.

BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

This cause came on this day for trial.

Present: Ed Dinkelspeil, Esq., for Plaintiffs. J. J. McLaughlin, Esq., for Defendant.

And, after hearing pleadings and evidence, the Court considering the law and evidence to be in favor of plaintiffs, for the reasons orally assigned,

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, H. Abraham & Son, and against defendant, The Board of Directors of the City Schools of New Orleans, in the full sum of One thousand and one and 68/100 dollars, and costs of suit; said judgment to be payable out of the School Taxes levied by the City of New Orleans, prior to the year 1879.

It is further ordered that, upon the judgment becoming final plaintiffs shall turn over to defendant the school certificates sued on herein, in order that the same may be cancelled.

Judgment rendered March 16th, 1898.

Judgment signed March 28th, 1898.

(Signed) GEO. H. THEARD, *Judge.*

TRANSCRIPT OF RECORD NO. 55524, D. A. CHAFFRAIX VS. BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE CITY OF NEW ORLEANS, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Petition.

Filed December 31st, 1897.

45 Civil District Court, Division "A."

No. 55254.

D. A. CHAFFRAIX
vs.
BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE PARISH OF ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of D. A. Chaffraix, a citizen of the French Republic, Respectfully represents:—

That your petitioner is the holder and owner of a number of school certificates amounting to the sum of four thousand six hundred and twenty seven 94/100 dollars, as more fully appears by the 88 certificates hereto annexed and the accompanying list.

That said certificates were issued by the Board of Directors for the City Schools of New Orleans, for the salaries and other expenses of the schools during 1874-1875 & 1876;

Wherefore petitioner prays that the Board of Directors of the Public Schools of the Parish of Orleans be cited hereto and after due proceedings that judgment be rendered in favor of petitioner and against defendants for the sum of Four thousand six hundred and twenty seven 94/100 dollars with legal interest from judicial demand and petitioner prays for general relief etc.

(Signed) CHAS. LOUQUE, *Att'y.*

COPY

Service accepted, citation waived, reserving legal delays to plead N. O. Dec. 31/97.

BOARD OF DIRECTORS OF PUBLIC SCHOOLS OF THE PARISH OF ORLEANS,

(Signed) By E. B. KRUTTSCHNITT, *Its President.*

Judgment.

Rendered January 24, 1898.

Civil District Court, Division "A."

No. 55524.

D. A. CHAFFRAIX

vs.

SCHOOL BOARD OF DIRECTORS.

46 This cause came on this 24th day of January 1898, for trial.

Present: Chas. Louque for Plaintiff.

Defendant absent.

When after hearing pleadings and evidence, the law and the evidence being in favor of the plaintiff;

It is ordered, adjudged and decreed that judgment be rendered in favor of plaintiff, D. A. Chaffraix, and against the Board of Directors of the Public Schools of the Parish of Orleans, for the sum of Four thousand six hundred and twenty-seven 94/100 dollars with legal interest from judicial demand Dec. 31st, 1897, and costs.

Judgment rendered January 24th, 1898.

Judgment signed January 28th, 1898.

[T. W. C. ELLIS, *Judge.*]*

Signature erased by consent of parties placed as filed. New Trial Granted.

(Signed) T. C. W. ELLIS, *Judge.*

Judgment.

Rendered February 21, 1898.

Division "A," Civil District Court for the Parish of Orleans.

No. 55254.

D. A. CHAFFRAIX

vs.

BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE PARISH OF ORLEANS.

Judgment.

The Court of its own motion, corrects the judgment herein rendered on February 21st 1898, so as to read as follows, to-wit:

[* Words enclosed in brackets erased in copy.]

POOR

For the reasons orally assigned by the Court, the law and evidence being with plaintiff;

47 It is ordered, adjudged and decreed that there be judgment in favor of D. A. Chaffraix, and against the Board of Directors of the Public Schools for the Parish of Orleans for the sum of Four Thousand six hundred and twenty seven 94/100 dollars payable out of the funds realized for the years prior to 1879, with legal interest from such time as the funds available shall be realized, and all costs.

It is further decreed that the certificates, in which this judgment is based, be turned over to the defendants, upon their demand, for preservation, or cancellation.

Judgment rendered February 21st, 1898.

Judgment amended and signed March 2nd, 1898.

(Signed) T. C. W. ELLIS, *Judge.*

TRANSCRIPT OF RECORD No. 56549, GABRIEL SINTES, TUTOR, VS. BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE PARISH OF ORLEANS, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Petition.

Filed May 10th, 1898.

Civil District Court, Division "B."

No. 56549.

GABRIEL SINTES, Tutor,

vs.

BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE PARISH OF ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Gabriel Sintes herein acting as the duly qualified tutor of his minor children Marguerite-Marie Antonia Sintes and Jeanne Marie Sintes, residing in New Orleans.

Respectfully represents:

That petitioner's wife, Antonia Hart, departed this life and your petitioner was duly appointed natural tutor of his minor children:

That your petitioner's wife was a teacher in the Public
48 Schools of this City during the years 1874, 1875, 1876 & 1878.

And the Board of Directors of the Public School of the Parish of Orleans are indebted unto her for 11 School Certificates issued by the above named Board for work done as a teacher as follows, to-wit:

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Name.	Year.	Am't.	State por.	City.
Miss Antonia Hart.....	1874	50.00	6.45	
Miss Lily Whitaker.....	1874	48.35	6.23	
Miss Antonia Hart.....	1875	40.00	33.67	
Miss Antonia Hart.....	1875	66.00	17.09	
Forwarded		204.35	63.44	
Miss Antonia Hart.....	1875	66.00	17.09	
"	"	66.00	17.09	
"	"	66.00	17.09	
"	1876	66.00	11.88 21.85	
"	"	66.00	26.66	
"	"	66.00	26.66	
"	1878	40.00	13.35	
		$640.35	215.11	$425.24

That the certificates are hereto annexed and made part hereof;

That notwithstanding due demand the defendant refuses to pay;

That petitioner be paid out of the school taxes levied by the City of New Orleans prior to 1879;

Wherefore petitioner prays that the Board of Directors of the Public Schools of the Parish of Orleans be cited hereto and after due proceedings be condemned to pay petitioner ($425.24) Four hundred and twenty five 24/100 dollars with legal interest from judicial demand to be paid out of the school taxes levied by the City of N. O. prior to 1879 and all costs of suit and petitioner prays for costs and for general relief &c.

(Signed) CHAS. LOUQUE.

49 *Answer.*

Filed May 23rd, 1898.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 56549.

GABRIEL SINTES, Tutor,

vs.

BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE PARISH OF ORLEANS.

Now comes into Court the Board of Directors of the Public School of the Parish of Orleans made defendants herein, and, for answer *the* the plaintiff's petition deny all and singular the allegations in said petition contained.

POOR

Wherefore defendants pray to be hence dismissed with judgment in their favor, and for costs.

(Signed) JAMES McLAUGHLIN,
Ass't City Att'y.

Judgment.

Rendered June 13th, 1898.

Civil District Court, Division "B."

No. 56549.

GABRIEL SINTES, Tutor,
vs.
BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS FOR THE PARISH OF ORLEANS.

Judgment.

This case having been submitted to the Court, and the Court considering the law and the evidence to be in favor of the plaintiff, and for the reasons orally assigned.

It is ordered, adjudged and decreed that there be judgment in favor of the plaintiff Gabriel Sintes, Tutor of his minor children Margueritte, Marie Antonia Sintes and Jeanne Marie Sintes and against the defendant, the Board of Directors of the Public Schools of the Parish of Orleans, for the sum of Four hundred and
50 twenty five & 24/100 Dollars ($425.24) payable out of the school taxes levied by the City of New Orleans prior to 1879, with legal interest from the time the funds reached the treasury, and for costs of suit.

Judgment rendered June 13th 1898.

Judgment signed June 17th, 1898.

(Signed) FRED. D. KING, *Judge.*

PROCEEDINGS OF THE CITY COUNCIL (DULY CERTIFIED) OF DATE OCTOBER 28TH, 1873, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Filed December 23rd, 1907.

[SEAL.]

Regular Meeting.

CITY HALL, NEW ORLEANS,
TUESDAY, *October 28th,* 1873.

The Council met this day at 12 M., in regular session.

Present: Hon. Louis A. Wiltz, Mayor presiding, and administrators, Brewster, Calhoun, Fritzenreiter, Lewis, Schneider, Strucken and Turnbull.

The minutes of the last meeting were approved.

COPY

Petition and Communications.

The undermentioned petitions and communications, presented by the Mayor, were read and referred as stated.

The estimate of the board of school directors for the year 1874, and a petition from the Society for the relief of Destitute Orphans Boys, for payment of value of property *ex*propriated for and damages suffered by excavation of the Carrollton Avenue Canal.

T*he* the Committee of the whole.

Council then adjourned.

DANIEL SCULLY, *Sect.*

I hereby certify the foregoing to be a true copy of the Minutes of date Oct. 28, 1873.

(Signed) T. W. CAMPBELL,
Clerk of Council.

51 PROCEEDINGS OF THE CITY COUNCIL (CERTIFIED COPY) OF DATE OCTOBER 27TH, 1874, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Filed December 23rd, 1907.

[SEAL.]

Regular Meeting.

CITY HALL, NEW ORLEANS,
NEW ORLEANS, *Oct.* 27, 1874.

The Council met this day at 12 M. in regular session.

Present: Hon. Louis A. Wiltz, Mayor, presiding, Administrators Brewster, Calhoun, Lewis, Schneider, and Strucken.

The minutes of the last meeting were approved.

Petitions and Communications.

The *undersigned* petitions and communications, presented by the Mayor, were, severally disposed of or referred as stated:

From Leeds & Co. for an increase of appropriations made to them in 1873 and 1874, for which cash was to have been paid but has not been paid, the increase to compensate for the discount on said appropriations in the markets; from the Board of School Directors, City of New Orleans transmitting their budget for the year 1875 and from Mrs. Jane McCerran, relative to the claim of her husband, deceased, against the City to the Committee of the whole.

The Council then adjourned.

DANIEL SCULLY, *Secretary.*

POOR

CITY HALL, *June 11th*, 1907.

I hereby certify the above to be a true copy of the extracts of the Minutes of the City Council of Date Oct. 27, 1874.

(Signed) T. W. CAMPBELL,
Clerk of Council.

PROCEEDINGS OF THE CITY COUNCIL (CERTIFIED COPY) OF DATE OCTOBER 19TH, 1875, OFFERED IN EVIDENCE BY COUNCIL FOR PLAINTIFF.

Filed December 23rd, 1907.

52 *Regular Meeting.*

CITY HALL, NEW ORLEANS, LA.,
TUESDAY, *October 19th*, 1875.

The Council met this day at 12 o'clock M., in regular session.

Present: Hon. Chas. J. Leeds, Mayor, Presiding, and Administrator- Bertoli, Brown, Bouney, Landry, McGrath and Pilsbury.

The minutes of the previous meeting were approved and their reading dispensed with.

The Mayor also laid before the council a communication from H. A. Corbin, Secretary of the School Board, transmitting estimate of expenditures for Public Schools for the year 1876, which, having been read, was referred to the committee of the whole.

I hereby certify the above is a true copy of an extract of the minutes of the City Council October — 1875.

(Signed) T. W. CAMPBELL,
Clerk of Council.

Ordinance Levying a School Tax of One-quarter of One Per Cent for 1874, No. 2595, A. S. 1, Offered in Evidence by Counsel for Plaintiff.

Filed December 23rd, 1907.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 13, 1874.

(No. 2595, Administration Series.)

An ordinance levying City Taxes for the year 1874, and, in conformity with act No. 53 of the acts of the General Assembly of Louisiana, approved March 12th, 1874, to modify and reduce the last tax levy for the same purposes.

Whereas the City Council is required under the act above referred to "to correct modify and reduce the last budget and tax levy in accordance with the provisions of all other acts of reduction of retrenchment which may be adopted during the present session relating to said City."

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Be it ordained that in conformity with the several acts
53 of the general assembly relative thereto and with ordinance No. 2590 Administration series, adopted May 5th 1874, the following taxes be and are hereby levied and assessed for the year 1874, on all the tangible property within the city of New Orleans, according to the assessment for said year.

City debt tax for the payment of interest on the City debt—one dollar on each one hundred dollars of valuation. Current City Expenses (for the payment of expenditures other than those for interest on City debt, public schools, Metropolitan Police, and New Orleans Park) sixty eight cents on each one hundred dollars of valuation.

Be it further ordained that Ordinance No. 2417 Administration series, adopted December 9th, 1873, which provides for the levy of a park tax for 1874, at the rate of one eighth of one per cent on the assessed valuation of all the property; and ordinance No. 2418, administration series, adopted December 9th, 1873, which provides for the levy of a public school tax, for 1874, at the rate of one fourth of one per cent on the assessed valuation of all property, shall remain in full force.

Be it further ordained that ordinance No. 2415, administration series adopted December 9th, 1873, which provides for the levy of a city debt tax, for 1874, at the rate of $150. 3 on each $100. of valuation; and ordinance No. 2416 Administration series adopted December 9, 1873, which provides for the levy of a tax for current city expenses for 1874, at the rate of $1 12. 2 on each $100 of valuation, be and — hereby repealed

Adopted by the Council of the City of New Orleans, May 12th, 1874.

Yeas.—Brewster, Calhoun, Fitzenreiler, Lewis, Schneider, Strucken, Turnbull.

(Signed) LOUIS A. WILTZ, *Mayor.*

A true copy:

[SEAL.] (Signed) DANIEL SCULLY, *Secretary.*

I certify the foregoing to be a true copy of the ordinance
54 on file in this office.

(Signed) M. POHLMANN,
Custodian City Archives.

City Hall, May 11th, 1906.

Ordinance Levying a Tax of One-quarter of One Per Cent for 1875, No. 2932, A. S., Offered in Evidence by Counsel for Plaintiff

Filed December 23, 1907.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 13th*, 1875.

(No. 2932, Administration Series.)

An Ordinance Levying City Taxes for the Year 1875.

Be it ordained, that in conformity with the several acts of the Legislature relative thereto and with ordinance No. — administration series adopted December 29th, 1874, the following taxes be and are hereby levied and assessed for the year 1875, on all taxable property within the City of New Orleans, according to the assessment of said year viz:

City debt tax for the payment of the interest on the bonded debt, one dollar and twelve cents on each and every one hundred dollars *for* valuation.

Police tax, forty nine and one half cents on each and every one hundred dollars of valuation. Public School Tax—one fourth of one per cent on each and every one hundred dollars of valuation.

Park tax—One Eighth of one per cent on each and every one hundred dollars of valuation.

Current City Expense Tax—fifty one cents on each and every one hundred dollars of valuation.

Adopted by the Council of the City of New Orleans January 12th, 1875, *thereto* of the Mayor to the contrary, notwithstanding.

Yeas.—Bertole, Brown, Burke, Landry, McCarthy, Pillsbury.

J. H. HARDY, *Secretary.*

55 I certify the foregoing to be a true copy of the ordinance on file in this office.

[SEAL.] (Signed) M. POHLMANN,
Custodian of the City Archives.

City Hall, May 11th, 1903.

Ordinance Levying a Tax of One-quarter of One Per Cent for 1876, No. 3367, A. S., Offered in Evidence by Counsel for Plaintiff.

Filed December 23rd, 1907.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 26th*, 1876.

(No. 3367, Administration Series.)

An Ordinance Levying City Taxes for the Year 1876.

Be it ordained by the council of the City of New Orleans, that the following taxes be and are hereby levied and assessed for the

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year 1876, on all taxable property within the limits of the City of New Orleans, according to the assessment of the said year to-wit:

City debt tax, for redemption and payment of interest on bonded debt, twenty-six cents on every one hundred dollars of valuation.

Police Tax forty-two cents, on every one hundred dollars of valuation.

School tax, twenty-five cents on every one hundred dollars of valuation.

Current city expense tax fifty-seven cents on every one hundred dollars of valuation.

Total tax—one and one half per cent on an investment of $19,045,515.

Adopted by the City Council of the City of New Orleans, January 25th, 1876, the veto of the Mayor to the contrary notwithstanding.

Yeas.—Bertoli, Brown, Burke, Landry, Pilsbury—5.

Nays.—Bouny.

J. H. HARDY, *Secretary.*

I certify the foregoing to be a true copy of the ordinance on file in this office.

[SEAL.] (Signed) M. POHLMAN,
Custodian of the City Archives.

City Hall, May 11th, 1906.

56 *Ordinance Levying One and One-half Per Cent. for* 1877, *No.* 3868, *A. S., Offered in Evidence by Counsel for Plaintiff.*

Filed December 23rd, 1907.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 13, 1877.

(No. 3868, Administration Series.)

Resolved that a tax of one and one half per cent on all taxable property within the limits of the City of New Orleans be and is hereby levied for the year 1877, according to the assessment rolls of said year.

Adopted by the Council of the City of New Orleans, March 13, 1877.

Yeas.—Brown, Cavarac, Diamond, Edwards, McCaffery and Ringstorff.

ED. PILLSBURY, *Mayor.*

A true copy.
(Signed) THOS. G. RAPIER, *Secretary.*

I certify the foregoing to be a true copy of the ordinance on file in this office.

[SEAL.] (Signed) M. POHLMAN,
Custodian of the City Archives.

City Hall, May 11th, 1906.

POOR

PROCEEDINGS OF THE CITY COUNCIL (CERTIFIED COPY) OF DATE DECEMBER 21ST, 1875, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Filed December 23rd, 1907.

Regular Meeting.

CITY HALL, NEW ORLEANS,
TUESDAY, *December 21st*, 1875.

The Council meet this day at 12 o'clock M., in regular session.

Present: Hon. Chas. J. Leeds, Mayor, presiding and administrators Bertoli, Brown, Bouny, McCarthy, Landry and Pillsbury.

Absent: Administrator Burke, attending Court.

The minutes of the previous meeting *was* approved and their reading dispensed with.

57 Communications from the Mayor and Administrators.

The Mayor laid before the counsel the following message, which was read received and ordered to be spread upon the minutes, and referred to the committee of the whole.

MAYORALTY OF NEW ORLEANS.
CITY HALL, *Dec.* 21, 1875.

To the City Council of New Orleans:

The time having arrived when you are to prepare the yearly budget and levy the annual tax, I submit for your consideration the following suggestions thereon.

It is evident to any one at all conversant with the pecuniary condition of this community that a tax adequate to meet the demands of the public creditor, the requirements of the laws in relation to the public schools and police and the necessary support of the City Government cannot, if levied, be collected from this impov-ished people.

The experience of the past year clearly demonstrates that unless taxation be reduced to an amount which will be within the ability of the taxpayers to meet, the means necessary to carry on the functions of government cannot be obtained.

The ability to pay the existing rate of taxation has become each year less and less, indicating thereby that the amount exacted exceeds the net revenues of the community deducting the sum necessary for its support.

A portion being thus taken each year, from the accumulations of more prosperous times the capital necessary for reproduction has been gradually curtailed, and the revenues therefrom diminished year by year. Imperative necessity therefore demands relief for this overtaxed and oppressed people.

In view of which I recommend

First. A strict scrutiny of all items of expenditure within your control, with a determination on your part to bring down the expenses of every department to the lowest possible point.

COPY

58 Although you have made during the past year great reductions therein, it is to be hoped that greater experience in the affairs of the City may enable you to make still further curtailments.

There are many charges imposed upon the City by State law which cannot be changed except by the action of the Legislature, awaiting which relief can only be obtained by consent of the parties interested who may be induced to relinquish a portion of what is now allowed by law in view of prompt cash payment.

Measures should be taken to that end as well as to bring to the attention of the Legislature the needed reforms.

Secondly. The suspension of the tax for the interest on the Public debt, which is demanded as well in the interests of the creditors as of the citizens, for, it is evident that unless immediate relief be given from the oppressive taxation which is destroying the value of all property, and prevent any recuperation from our present prostrate condition the inability of the people must cause eventually, from utter exhaustion, a repudiation of the debt.

Thirdly. The withholding of the taxes for the public schools and the police until they shall be placed under the control of the City authorities, so that the expenditures therefor can be reduced to the point demanded by the poverty of our people, and their management conducted in accordance with the views of those by whom they are supported, and for whose benefit they should be maintained.

Both the schools and police, although municipal institutions, are by existing laws under the control of State authorities; they are managed with no regard to the sentiments or interest of the citizens who have been taxed for their support, and I cannot deem a law constitutional which would compel you to levy a tax for them, contrary to the well known wishes of your constituents.

Indeed a law which demands the levy of such a tax seems to me not only gross usurpation, but violative of the great American right of local self Government.

That eminent jurist, Judge Cooley of Michigan, in a case involving the powers of the Legislature over municipal corporations
59 says:

The Doctrine that within any general grant of legislative power by the constitution there can be found authority thus to take from the people the management of their local concerns, and the choice directly or indirectly, of their local officers, *of* practically asserted, will be somewhat startling to our people, and would be likely to lead to a more careful scrutiny of the charters of government framed by them, least sometimes, by an inadvertent use of words, they might be found to have conferred upon some agency of their own the legal authority to take away their liberties altogether."

Again he says: "The State may *would* local institutions according to its views of policy or expediency, but local government is matter of absolute right and the State cannot take it away. It would be the boldest mockery to speak of a city as possessing municipal liberty where the State not only shaped its governments but at discretion sent in its own agents to administer to, or to call that system one of constitutional freedom under which it should be equally admissible

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to allow the people full control in their local affairs, or no control at all."

In another place he says:

"When the State reaches out and draws to itself and appropriates the powers which from time immemorial have been locally possessed and exercised, and introduces into its legislation the centralizing ideas of constitutional Europe, under which despotism, whether of monarch of commerce alone has flourished, we seem forced back upon and compelled to take up and defend the plainest and most primary *anxious* of free government, as if even in Angelican liberty, which has been gained step by step, through extorted charters and bills of rights, the punishment of kings and the overthrow of dynasties, nothing was settled and nothing established."

If these views be correct it is incumbent upon you as the agents of this people, to use every means in your power to protect them against this violation of their rights. Should these taxes
60 be levied by you, whether by your own option or at the demand of the law, it is likely to be construed both by the Courts and the people as your own act.

If however the School Board and the Police Board two irresponsible bodies not chosen by the people or their representatives, are empowered to compel you to levy taxes not deemed by you in accordance with the wishes or the best interest of your constituents, this virtually investing them with the prerogative of taxing those whom they do not represent, in violation of the sound maxim "No taxation without representation," your refusal to be the interesting agents of injustice will throw the responsibility of this great wrong upon those who should *hear* it, and the people informed of the true cause of their *grevience* will be the better able to apply the proper remedy.

The expenditures of these two departmnts, whose management is so unsatisfactory to the large majority of our citizens, now exceeds $1,000,000 per annum, an amount in my opinion $400,000 or $500,000 in excess of what they should be in our impov-ished condition.

This great extravagence so destructive to the prosperity of the City, and so unjust to the public creditor whose claims are postponed on account of the public necessity and whose interests must be seriously injured by any unnecessary outlay; indicates how dangerous it is to violate the fundamental *principals* of government, and demonstrates the necessity of preserving to the people the management of their own local affairs, and the choice of their local officers.

Your fellow citizens naturally look to you, their chosen representatives, to preserve for them the living spirit of the American system of constitutional freedom, the sacred right of local self government. I feel assured that you will not dissappoint these expectations, but that you will to the utmost of your ability oppose every encroachment upon their rights.

CHARLES J. LEEDS, *Mayor.*

The council then adjourned.

61 J. H. HARDY, *Sec't.*

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CITY HALL, *June 11th*, 1907.

I hereby certify the above to be a true copy of extracts of the minutes of the City Council of Date December 21st, 1875.

(Signed) T. W. CAMPBELL,
Clerk of Council.

PROCEEDINGS OF THE CITY COUNCIL (CERTIFIED COPY) OF DATE JANUARY 4TH, 1876, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Filed December 23rd, 1907.

Regular Meeting.

CITY HALL, NEW ORLEANS,
TUESDAY, *January 4th*, 1876.

The Council met this day at 12 o'clock M., in regular session.

Present: Hon. Chas. J. Leeds, Mayor, Presiding, and Administrators, Bertoli, Brown, Bouny, Burke, McCarthy, Pillsbury, and Landry.

The minutes of the previous meeting were approved and their *meeting* dispensed with.

Communications from the Mayor and Administrators.

The following veto message of the Mayor was read and received, and ordered to be spread on the minutes.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *June 4th*, 1876.

To the City Council of New Orleans:

I return without my approval "an ordinance adopting an estimate of the receipts or revenues of the City of New Orleans, for the year 1876."

The proposed rate of taxation contemplates the levy of taxes for school and police, as the rate is too great unless these taxes are included. Under a system of centralization recently introduced into this State, the control of the schools and police has been taken from the local authorities and conferred upon boards in no way responsible to this community or their representatives. These Boards are empowered to assess the City in the one case without limit,
61½ and in the other, at one time without limit, but lately, a limit far in excess of what is necessary; thus, in effect, clothing them with the power of taxation without representation.

Believing that local self-government is one of those inalienable rights, interwoven, as it were, in our American system of government, which belongs of right to the people; believing that the management of local affairs by the local officers, and that local taxation by the duly elected representatives of those who are to pay the taxes are privileges inherited from our forefathers. Fully convinced that in their main tenants a great principal, is involved which cannot be violated, without great danger to the liberties *to* the people, I cannot consent to the imposition of these taxes until the control of these

institutions, for the support of which these taxes are intended, is returned to the City.

Under this system of centralization millions of dollars have been squandered, excessive taxes collected, and a great debt accumulated, And yet the school teachers and the policemen, who have performed the labor, under pretense of which these taxes have been imposed, complain that they do not receive the compensation to which they are entitled. Year after year have our citizens hoped for relief. And time after time has the hope been disappointed. An exhausted community, no longer able to endure this taxation look to you, their chosen representatives for relief.

I am aware that stringent laws have been enacted requiring the levy of these taxes. I know that under these laws the Mayor and Administrators are liable to removable from office for their non-compliance, and that, in case of such removal, persons not representing this community nor responsible to it will be placed in charge of its affairs and will impose these taxes. But so well satisfied am I that there can be no relief to this oppressed people, unless the control of their own local affairs is obtained, that I consider it will be better
that this Council, representing as it does the wishes of this
62 community, should be thrust out of office in vindication of the
rights of its constituents then to be the mere machine through which unjust taxes shall be extorted from an unwilling people. If these taxes are to be imposed, let it be done by those who in no manner represent this people, so that the great violation of principal may be seen in all its naked deformity. And the responsibility placed where it properly belongs.

Even if there was no great principal of local self government underlying all constitutions and laws, that article of the State constitution which says "Taxation shall be equal and uniform throughout the State," would seem to prohibit the Legislature from imposing a tax upon this City which it did not impose upon the rest of the State. It cannot *be* indirectly that which it cannot do directly. How, then, can it be made a law compelling you to levy a tax which it cannot levy itself?

The laws have been cunningly devised to compel the penalties of dismissal from office, the imposition of these taxes, so as to give a validity to them which they could not otherwise obtain; as, if they are imposed by you who are legally authorized to levy taxes, they must become legal by your action, as it cannot well be determined whether your act was the result of your own will, or in obedience of those unconstitutional enactments.

CHARLES J. LEEDS, *Mayor.*

Mr. Burke presented the following remarks, in connection with the Mayor's message, which were received, and ordered spread upon the minutes:

NEW ORLEANS, *December 27th*, 1875.

E. A. Burke, Esq., Administrator of Improvements:

SIR: Your letter of the 22nd, inst., waives all consideration of personal responsibility, and of moral obligation, resulting from the

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failure or refusal to perform a plain official duty. We therefore, pass at once to the question of the liability of the sureties on your official bond.

The bond is intended to indemnify the City of New Orleans for losses consequent on official malfeasance or non-feasance.

The sur/ties are undoubtedly liable to make good to
63 the City any such losses, to the extent of the amounts for which they have respectively bound themselves in the bond.

The bond is intended to indemnify the City of New Orleans for losses consequent on official malfeasance. The sureties are undoubtedly liable to make good to the City any such losses, to the extent of the amounts for which they have respectively bound themselves in the bond. What losses, if any, will be sustained by the City in consequence of a failure or refusal to impose the taxes mentioned by you, it is not our province to suggest or anticipate. It is clear no other person then the City of New Orleans, the obligo- in the bond, can resort to it for indemnification; you- personal liability is much more extensive; it comprehends responsibility in damages to any one to the extent of the injury sustained. In the case of Amy vs. Supervisors, 11 Wallace 138, the Supreme Court of the United States used the following emphatic language: "The rule is well settled, that where the law required absolutely a ministerial duty to be performed by a public officer, and he neglects or refuses to do such act, he may be compelled to respond to the extent of the injury arising from his conduct. There is an unbroken current of authorities to this effect."

The legal consequence of the refusal or neglect of the board of administrators to impose the taxes directed by law, will be a mandamus to compel the performance of that duty, and in the case of the public debt tax, the nullity of all ordinances, resolutions, and other acts of the council, enacted or done subsequent to such refusal. This nullity is expressly declared in the fifth section of Act No. 94, approved March 30th, 1870; and in case of the Police and school tax failure to make the levy will render the office of the Administrators vacant, and thereupon the Governor can proceed to appoint a council who will conform — the law. The result flows from the stringent provision of section nine, act No. 23, approved April 1st, 1874, and section two of act approved February 26th, 1874, being No. 33, section thirty two of the new city Charter, act No. 7, approved March 16th, 1870, provides "that any member of the council who fails to perfom the duties imposed upon him by
64 the act may be compelled to performance, at the instance of any citizen, by a writ of mandamus, which shall be tried by preference both in the district and Supreme Courts."

Act No. 73, approved April 26th, 1872, requires the Council after the adoption of the annual estimate, to proceed to the levy of the annual taxes required to pay "the City debt tax, which shall be based upon the detailed estimate of the sinking funds and the interest falling due," and "tax current city expenses, including police, and exclusive of schools." The execution of all these laws can be enforced by mandamus. We consider the limitations imposed by

act No. 5, approved March 17th, 1870, on the power of the Courts to issue writs of mandamus against the auditing officer, or treasurer, or other disbursing officer of the city, have no application where the State, through its Attorney General, or the Board of Metropolitan Police, or the Board of School Directors is seeking to compel the levy of a tax for the public purpose; indeed, any citizen might proceed by mandamus to enforce the levy of school tax.

Watts vs. Carroll, 11A. 141.

Nor do the provisions of said act No. 5, of 1870, interfere to prevent the bond holders who may obtain judgments on their bonds or coupons, from proceedings by mandamus to compel the Council to levy tax for the payment of their demands, especially in cases where the bonds were issued prior to the seventeenth of March, 1870, under legislation requiring the imposition of a special tax for the payment of the principal and interest of the bonds.

Even in cases where the bonds were issued subsequent to the seventeenth of March, 1870, the creditor, after judgment, could enforce by mandamus the imposition of the interest taxes which the fifteenth section of act No. 73, of 1872, required the Council to levy. We cannot assent to the legal proposition that the police tax or school tax is void, on the principal that the Legislature has no constitutional authority to regulate and control our local institutions except through the agency of municipal officers elected by the people. We do not consider the question open in this State.

65 The framers of this constitution of 1868 designedly omitted the provision contained in all our previous constitutions, which secured to the citizens of New Orleans the right of appointing the several public officers necessary for the administration and police of said city, pursuant to the mode of election to be prescribed by the legislature. This provision is found in article twenty-three of the constitution of 1812, article 145 of the constitution of 1845, article 124, of the constitution of 1852, and article 135 of the constitution of 1864. The last mentioned article provided for a uniformed police, to consist of citizens to be selected by the Mayor. The omission of this important provision in the constitution of 1868 is significant; the Supreme Court has declared that it means that the whole subject of the City corporation and its police are under the power and discretion of the legislature.

Diamon vs. Cain, 21 An. 319.

This is no new doctrine; it is sustained by ample authority, and little hope can be entertained of overturning it.

Mr. Justice Spofford, in the case of Andrews vs. Saucier (13 An. 303) says: "In entering upon an inquiry into the validity of the law (speaking of the election law of 1857) we must bear in mind that the City of New Orleans is not an independent sovereignty, which, like one of the States of this Union, has parted with a portion of its power, preserving all that it not expressly delegated; but that it is like any of the parishes, or other municipal corporations of the State, subject to the Legislative control, excepting so far as the

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State constitution has prohibited the Legislature from acting, or furnishing special rules for its action."

The Court of Appeals of New York, when the constitutionality of the metropolitan police act was in question, said: "Plenary power in the Legislative for all purposes of civil government is the rule. A prohibition to exercise a particular power is the exception."

People vs. Wood et al., 15 N. Y. 544.

In a similar case the same court said: "The power of the Legislature of the State is supreme over that of all local legis-
66 latures, except when the constitution intervenes to restrict it. The Legislature may recall itself, and exercise at its pleasure so much of the powers it has conferred upon the city corporation as are not secured to it by the constitution."

People vs. Pinkney, 32 N. Y. 393.

In the same case Chief Justice Denio declared that: "If we were to establish the principal that the Legislature can never reduce the Administrative authority of countries, cities and towns, can never resume in favor of the central power any portion of the jurisdiction of those local divisions, or change the partition of it among them, as it existed when the constitution was adopted, we should, I think, make an impracticable government."

Mr. Justice Nelson, in 13 Wendell, 331, tersely remarked, "It is an unsound and even absurd proposition, that political power conferred by the Legislature can become a vested right, as against the government in an individual body of men. It is repugnant to the genuis of our institutions and the spirit and meaning of the constitution, for by that fundamental law all political rights not there defined and taken out of the exercise of Legislative discretion were intended to be left subject to its regulation."

Again, in People vs. Shepard, 36 N. Y. 386, the Court of Appeals of New York considered the following proposition as settled law:

"The police power exercised in towns, cities and countries, respectively, were vested in the local authorities by Legislation, and not by irrevocable constitutional grant.

"The legislature has authority to arrange the distribution of these powers as the public exergencies may require, appointing them to local jurisdictions, to such extent as the law making power deems appropriate, and committing the exercise of the residue to officers appointed as it may see fit to ordain."

The Supreme Court of the United States uses the following emphatic language in the case of the United States vs. Railroad Company, 17 Wall. 329. "A municipal corporation like the City of Baltimore is a representative, not only in this State, but a por-
67 tion of its governmental power. It is one of its creatures, made for specific purpose to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its Legislature or other appointed Channels govern the local territory as it governs the State

at large. It may enlarge or contract its power, or destroy its existence."

Yours truly,

SEMMES & MOTT.

Mr. Brown moved that the ordinance do now pass the veto of the Mayor to the contrary notwithstanding, seconded by Mr. Burke and carried by the following vote:

Yeas: Bertoli, Brown, Burke, Landry, McCarthy, Pillsbury—6.

Nay: Bouny—1.

The chair then declared that "Ordinance adopting an estimate of the receipts or revenues of the City of New Orleans for the year 1876," passed, the veto of the Mayor to the contrary notwithstanding.

I hereby certify the above is a true copy of an extract of the minutes of the City Council January 14th, 1876.

(Signed) T. W. CAMPBELL,
Clerk of Council.

Ordinance No. 6438 (Certified Copy), Making Taxes Payable in Scrip, Offered in Evidence by Counsel for Plaintiff.

Filed December 23rd, 1907.

MAYORALITY OF NEW ORLEANS,
CITY HALL, *April 21st*, 1880.

(No. 6438, Administration Series.)

An ordinance to carry into effect the provisions of Act No. 49 of the General Assembly of 1880, approved March 20, 1880.

SECTION 1. Be it ordained by the Council of the city of New Orleans that in order to carry out the provisions of Act No. 49, of the acts of the General Assembly of 1880, approved March 20th, 1880, all officers and employees of the City of New Orleans or
68 for it authorized to collect and to receive payment of taxes and licenses be and are hereby directed to receive in payment of the municipal taxes and licenses due for any and all years anterior to January 1, 1879, any and all valid warrants or script or evidence of indebtedness of the City of New Orleans, except judgments; but nothing hereinbefore — shall be construed as having any reference to the school or Metropolitan Police taxes, warrant script or certificates.

SECTION 2. Be it further ordained etc., That any and all taxes imposed for the public schools and collected through or by the City of New Orleans, and due anterior to January 1, 1879, shall be payable in school certificates or script of all and any years as well as in cash, and for the purposes hereof the taxes for the schools payable are declared to be in proportion and rate such as have been hereto-

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fore collected for the public schools by the City, the proportion and rate for the years 1877, and 1878, being as declared in Ordinance No. 6294, A. S., twenty cents on every one hundred dollars of assessment for each of said years respectively.

SECTION 3. Be it further ordained, etc., That all and any of the metropolitan police warrants or scrip, for the years 1874, 1875, and 1876, shall be receivable for the metropolitan police taxes for any and all years — which any taxes were levied for the Metropolitan Police.

SECTION 4. Be it further ordained etc., that no City scrip, warrants, or other evidence of indebtedness shall be receivable as above until it has been examined by the Administrators of Public Accounts of the City, and by him verified and endorsed.

That no school certificates or scrip shall be receivable unless verified, approved, or certified as now required by law and ordinance; and no Metropolitan Police Warrants, certificates, or scrip shall be received unless drawn, approved or verified as now provided by law and ordinance.

SECTION 5. Be it further ordained, etc., That all ordinance and parts of ordinance- in conflict or inconsistent herewith be and the same are hereby repealed.

69 Adopted by the Council of the City of New Orleans April 20th, 1880.

Yeas: Behan, Chevally, Collins, Glynn, Marks, Meallic.

J. W. PATTON, *Mayor.*

A true copy:

ROBERT C. WOOD, *Secretary.*

NEW ORLEANS, *November 3rd*, 1907.

A true copy.

[SEAL.] (Signed) W. P. BALL.

Secretary to the Mayor.

Petition, Answer, Judgment, Writ of Fi. Fa. and Marshal's Return Thereon in the Case of Edith Faurie vs. Board of Directors of City Schools, No. 13080 of the United States Circuit Court for the Eastern District of Louisiana, Offered in Evidence by Counsel for Plaintiff.

Filed December 23rd, 1907.

To the Hon. The Circuit Court of the United States for the Eastern District of Louisiana:

The petition of Edith Faurie a citizen of the State of New York and who resides in the City of New York respectfully represents:

That your petitioner has obtained a judgment against the Board of School Directors of the City Schools of New Orleans a corporation domiciled in the Parish of Orleans within the jurisdiction of this Court and a citizen of the State of Louisiana;

That said judgment was rendered for the sum of nineteen thou-

sand two hundred and forty-eight 40/100 dollars with 5% interest per annum from the second of April 1901, and costs of suit,

That said judgment was rendered contradictorily with the said school board as the whole appears by the certified copies of petition, answer and judgment hereto annexed and made part hereof;

70 That the costs amount to the sum of Eighty-six 35/100 dollars;

Wherefore petitioner prays that the Board of School Directors of the City Schools through E. B. Kruttschnitt, President thereof be cited hereto and after due proceedings be condemned to pay petitioner the sum of Nineteen Thousand Two Hundred and forty-eight 40/100 Dollars with 5% interest per annum from April 2nd, 1901, and eighty six 35/100 dollars costs and petitioner prays for general relief &c.

(Signed) CHAS. LOUQUE, *Att'y.*

Answer.

Filed March 3rd, 1903.

U. S. Circuit Court, Eastern District of Louisiana.

No. —.

E. A. FAURIE
vs.
BOARD OF SCHOOL DIRECTORS.

Now into Court, through undersigned counsel comes the Board of School Directors of the Parish of Orleans, made defendant in this cause, specially insisting on same and without any manner waiving the said exceptions, for answer to plaintiff's petition, denies each and every allegation therein contained.

Wherefore defendant prays to be hence dismissed, with costs and for general relief.

(Signed) ARTHUR McGUIRK,
Ass't City Attorney.

Judgment.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division, November Term, 1902.

NEW ORLEANS, SATURDAY, *March 14th,* 1903.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange District Judge.

71 13080.

Miss EDITH FAURIE
vs.
BOARD OF DIRECTORS OF THE CITY OF NEW ORLEANS.

This cause came on this day for trial.

Present: Charles Louque, Attorney for Plaintiff.
" Arthur McGuirk for defendants.

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Whereupon the parties in the cause filed a written stipulation waiving trial by jury and submitting the cause to the Court.

And thereupon, after hearing pleadings, evidence and counsel the Court finds the law and the evidence to be in favor of the plaintiff and against the defendants.

It is therefore ordered, adjudged and decreed that the plaintiff, Miss Edith A. Faurie, do have and recover of the defendants, The Board of Directors of the City Schools of New Orleans the sum of Noneteen Thousand two hundred and forty eight 40/100 dollars with five per cent per annum interest from April 2, 1901, together with eighty-six & 35/100 dollars costs in State Court and all costs of this suit.

Judgment rendered March 14th, 1903.

Judgment signed March 21, 1903.

(Signed) CHARLES PARLANGE, *Judge.*

Writ of Fi. Fa.

Issued March 20/07.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the Eastern District of Louisiana.

The President of the United States to the Marshall of the Eastern District of Louisiana or His Lawful Deputy, Greeting:

72 You are hereby commanded to demand from the Board of Directors of the City Schools of New Orleans the sum of Nineteen thousand two hundred and forty eight 40/100 Dollars with five per cent per annum interest from April 2, 1901, together with eighty six and 35/100 Dollars costs in State Court and Clerk's costs..$28.35
Attorney's Docket fee..... 10.00
cash, which Edith Faurie lately recovered by judgment of the Circuit Court *for* the United States for the Fifth Circuit and Eastern District of Louisiana, and if the same be not paid on demand, that then you cause, the same to be made out of the personal estate of the said Board of Directors of the City Schools of New Orleans in your District, if sufficient personal estate can be found therein, but if insufficient personal estate can not be found in your District, that then you cause the same to be made out of the real estate of the Said Board of Directors of the City Schools of New Orleans in your District, and that you have those moneys before our said Court to render to the said Edith Faurie for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 20th day of March A. D. 1907, and 131 year of the Independence of the United States.

(Signed) H. J. CARTER, *Clerk.*

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Marshall's Return.

Received by U. S. Marshall New Orleans, La., March 20/07, and on the 21st day of the same Month and year I made demand on Andrew H. Wilson, President of the Board of School Directors for the Parish of Orleans for the amount of this writ. He replied that he had no funds with which to pay same. I then demanded
73 that he point out property upon which I could levy in satisfaction thereof, he replied that he knew of no property out of which this writ could be realized. I then called upon Hon. Martin Behеman, Mayor of the City of New Orleans, and demanded of him, the payment of this writ. He replied that he had no funds with which to pay same. I demanded that he point out property upon which I could levy in satisfaction thereof, he replied that he knew of no property upon which I could levy.

I then called upon Charles Louque, Attorney for plaintiff, herein, and demanded that he pount out property upon which I could levy, in satisfaction of this writ. He replied that he knew of no property either real or personal, and directed me to return this writ "Nulla bona", which I do.

(Signed) VICTOR LOISEL,
U. S. Marshall,
By T. I. GALBRITH, *Dy.*

CLERK'S OFFICE.

I hereby certify the foregoing to be true copies of the petition, filed June 10th, 1902; Answer of defendant, filed March 3, 1903, Judgment and writ of fi. fa. issued March 20th, 1907, with Marshal's Return thereon filed March 21, 1907, in the case of Edith Faurie vs. Board of School Directors of City Schools of New Orleans La., No. 13080 of the Docket of the United States Circuit Court for the Eastern District of Louisiana.

Witness my hand and seal of said Court at the City of New Orleans, La., this 7th day of May A. D. 1907.

[SEAL.] (Signed) H. J. CARTER, *Clerk.*

Judgment for Respondents.

Rendered January 2nd, 1908.

74 This matter having been submitted to the Court for adjudication, the Court considering the law and evidence to be in favor of respondents, and for the reasons orally assigned:

It is ordered, adjudged and decreed that the Writ of mandamus, herein issued be recalled and quashed, and relator's demand be rejected at their costs.

Judgment rendered in open Court, January 2nd, 1908.

Judgment signed in open Court February 7th, 1908.

(Signed) FRED D. KING, *Judge.*

COPY

Motion for the Return of School Certificates & Sheriff's Return.

Filed January 6th, 1908.

Civil District Court for the Parish of Orleans.

No. 82482.

STATE ex. Rel. FISHER, GASQUET, & al.
vs.
MAYOR AND COUNCIL OF N. O.

On motion of Chas. Louque, Howe & Fenner att'ys for Relators and on suggesting to the Court that the School certificates now in the hands of the Board of Liquidation should be returned to the Clerk's office, where said certificates properly belong.

It is ordered by the Court that the Board of Liquidation through its President R. M. Walmsley do show cause on Friday the 10th of January 1908 at 11 o'clock A. M. why the school certificates in their hands should not be turned over to the Clerk's Office of the Civil District Court.

Received Monday January 6th, 1908, and on the 7th day of January 1908, I served a copy of the within rule on the Board of Liquidation defendant in rule by personal service on R. M. Walmsley its President.

Returned same day.

Sheriff's fees, —.

(Signed) G. M. GOSS,
Deputy Sheriff.

75 *Motion for New Trial.*

Filed January 7th, 1908.

Civil District Court for the Parish of Orleans.

No. 82482.

STATE ex Rel. FISHER, GASQUET et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On motion of Chas. Louque Howe & Fenner, Att'ys for Relators, and on suggesting to the Court that the judgment herein rendered is contrary to the law and the evidence for the reasons:

1st. That the Relators were under contract with the School Board.

2nd. That their contracts were made payable out of a special tax to be levied by the City of New Orleans.

3rd. That there was no limit to this special tax; it was to be not

less than ¼ of one per cent., but it could be much more,—1873 p. 73.

4th. That the School Board prepared its estimates and submitted the same to the City in the Month of October, 1873—1874—1875 and 1876, as directed by the act of 1873;

5th. That a sufficient levy was never made to pay the contracts of relators.

6th. That the City did not collect all the taxes levied, by $174,000.00;

7th. That the judgment was obtained by Relators to enforce their contracts against the School Board which Liquidated their claims;

8th. Under the consistent jurisprudence of the Supreme Court of the United States, and Louisiana, the power of taxation existing at the date of the contract, is read into the contract and continues to exist, so far as necessary, for the enforcement of the obligations of the contracts, irrespective of any subsequent legislation or constitutional enactments restricting the power of taxation—37 A p. 17.—State ex Rel. Marchland vs. New Orleans, and authorities they quoted.

It is therefore ordered by the Court that the Mayor and
76 Council, Defendants herein through the City Attorney do show cause why a new trial should not be granted herein;

New Trial Refused.

Extract from the Minutes, Division "B," Friday, February 7th, 1908.

Present: Hon. Fred D. King, Judge.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

The rule for a new trial herein filed January 7th, 1908, having been submitted to the Court, the Court considering the law, for the reasons orally assigned.

It is ordered that said rule be dismissed, and the new trial therein prayed for, be denied.

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Motion of Appeal.

Filed February 13th, 1908.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On motion of Chas. Louque, Attorney for John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher, heirs of Francis J. Gasquet, heirs of Jos. Hernandez, U. Koen & Co. transferee of Jose Venta, Jean Pomez, Georgiana T. Frederichs, Lizzie Wheelright, Mary A. Sullivan, Mary O'Donnell, Mary Fortier, Edward F. Duclaux, Gabriel Sintes tutor for Margarite, Marie A., and James M. Sintes, Wid. Amelie Gautreau, Peter Johnson, H. Abraham and Son, Miss E. McCerran, heirs of M. W. Newman, E. Emanuel, J. M. Malter, S. E. Hille, A. E. Brewer, S. Easton, Anna Fellman, Estate Adele Beer, John A. Guthans; Dr. St. M. Fortier, Wid. Eugenia Quinlan Executors of E. J. Quinlan universal legatee of Mary Quinlan, all of whom reside in New Orleans; D. A.
77 Chaffraix, a citizen of the French Republic; Miss Edith Faurie and T. P. Wharton, Citizens of the State of New York; and Miss Fannie DeLacy, a citizen of the state of Montana; and on suggesting to the Court that your movers are aggrieved by the judgment herein rendered refusing the mandamus prayed for and that they desire to appeal to the Supreme Court;

It is ordered by the Court, that a suspensive appeal be granted to movers from the judgment herein rendered, returnable to the Supreme Court of Louisiana, on the First Monday of March, 1908, on movers giving bond conditioned as the law directs in the sum of Five Hundred Dollars.

F. D. K.

Appeal Bond.

Filed February 13th, 1908.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET & als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

Know all men by these Presents That we, John B. Fisher, James M. Fisher, Wm. G. Fisher, and Robert B. Fisher, heirs of Francis

J. Gasquet, heirs of Jos. Hernandez, U. Koen & Co., transferrees of Jose Venta, Jean Pomez, Georgiana T. Fredericks, Lizzie Wheelright, Mary A. Sullivan, Mary O'Donnell, Mary Fortier, Edward F. Duclaux, Gabriel Sintes tutor of Marguerite, Marie A. and Jeanne M. Sintes, Wid. Amelie Gautreau, Peter Johnson, H. Abraham & Son; Miss E. McCerran heirs of M. W. Newman, E. Emanuel, J. M. Malter, S. E. Hille, A. E. Brewer, S. Easton, Anna Fellman, Estate Adele Beer, John A. Guthans, Dr. St. M. Fortier, Wid. Eugene Quinlan executors of F. J. Quinlan, universal legatee of Mary Quinlan all of whom reside in New Orleans; D. A. Chaffraix, a citizen of the French Republic; Miss Edith Faurie and T. P. Wharton, citizens of the State of New York; and Miss Fannie De Lacy, a citizen of the State of Montana; and James A. Brennan, as surety are held and firmly bound unto Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Five
78 Hundred Dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on this Thirteenth day of February in the year of our Lord one thousand nine hundred and eight.

Whereas, the above bounded principals have this day filed a motion of appeal from a final judgment rendered against them in the suit of State ex rel., Fisher, Gasquet et als. vs. Mayor and Council of New Orleans No. 82,482 of the Civil District Court for the Parish of Orleans, on the — day of —— 190- and signed on the 7th day of February, 1908.

Now the condition of the above obligation is such, that the above bound principals shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them or that the same shall be satisfied by the proceeds of their estate real or personal, if they be cast in the appeal; otherwise that the said surety shall be liable in their place.

Signed, sealed and delivered in the presence of

(Signed) CHAS. LOUQUE,
Att'y for the Above Named Relators.
[SEAL.]

" JAMES A. BRENNAN. [SEAL.]

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Letter of Instructions.

Filed March 14th, 1908.

Civil District Court, Division "B."

No. 82482.

STATE ex Rel. FISHER, GASQUET & als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

To the Hon. the Clerk of the Civil District Court for the Parish of Orleans.

DEAR SIR: In the matter of State ex rel. Fisher, Gasquet & als., in making and preparing the transcript of appeal to the
79 Supreme Court you will use the printed record of the Supreme Court of the U. S. in the original, and send the original school certificates with the transcript.

Rem'ng, Very Respectfully,
(Signed) CHAS. LOUQUE,
Att'y for Relators.

Letter of Instructions.

Filed March 16th, 1908.

Civil District Court, Division "B."

No. 84842.

STATE ex Rel. FISHER, GASQUET & als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

NEW ORLEANS, *March 10th*, 1908.

To the Clerk of the Civil District Court for the Parish of Orleans.

DEAR SIR: You are to omit from the transcript of appeal the following records offered in evidence which are already in the Supreme Court of Louisana, to-wit:

Fisher vs. School Board 30262 C. D. C.—10888 Supreme Court.
Gasquet vs. School Board, 35156 C. D. C.—11119 Supreme Court.
Fisher vs School Board 43840 C. D. C.—12105 Supreme Court.

Rem'ng, Very Respectfully,
(Signed) CHAS. LOUQUE,
Att'y for Relators.

80 *Excerpts from Comptroller's Report Offered in Evidence by Counsel for Relators.*

Filed Dec. 23rd, 1907.

1906. School Tax, 1874.

May 31.	Collected	.25	
			.25

1906. School Tax, 1875.

May 31.	Collected	.25	
July 31.	"	.20	
Oct. 31.	"	1.50	
			1.95

1906. School Tax, 1876.

Apr. 30.	Collected	.25	
May 31.	"	1.00	
Aug. 31.	"	.18	
Nov. 30.	"	.06	
			1.49

1906. School Tax, 1877.

Apr. 30.	Collected	.20	
May 31.	"	.20	
Nov. 30.	"	.06	
			.46

1906. School Tax, 1878.

May 31.	Collected	.20	
July 31.	"	.24	
Nov. 30.	"	.21	
			.65

1873.

Valuation of taxable property..... $135,891,300

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	75.10
Police tax	32.
School tax	25.
Park tax	.12.50
Interest tax	1 55 40
Total	3 00 per cent.

81

1874.

Valuation of taxable property..... $130,913,356

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	68
Police Tax	44 50
School tax	25
Park tax	12 50
Interest tax	1.00
Total	2 50 per cent.

1875.

Valuation of taxable property..... $119,288,504

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	51
Police tax	49 50
School tax	25
Park tax	12 50
Interest	1 12
Total	2 50 per cent.

1876.

Valuation of taxable property..... $119,045,515

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	57
Police tax	42
School tax	25
Premium bond tax	26
Total	1 50 per cent.

1877.

Valuation of taxable property..... $109,669,889

Ratio of Taxation on Every One Hundred Dollars.

City expense	60
Premium bond tax	40
Police tax	30
School tax	20
Total	1 50 per cent.

1878.

Valuation of taxable property	$111,147,245

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	84
Premium bond tax	46
School tax	20
Total	1 50 per cent.

82

1905.

Valuation of real estate	$116,182,356.00
Valuation of personal property	54,401,018.00
Total valuation	$170,583,374.00

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	1 00
Interest and redemption City Bonds	1 00
Sewerage tax	20
Total Rate of Tax	2 20

1906.

Valuation of real estate	$135,046,131.00
Valuation of personal property	69,539,836.00
Total valuation	204,585,967.00

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	1 00
Interest and redemption City bonds	1 00
Sewerage tax	20
Total rate of tax	2 20

83–85 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, L. W. Gunther, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing Ninety one (91) pages do contain a true correct and complete Transcript

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of all the pleadings had, documents filed and evidence adduced upon the trial of the cause wherein State ex rel. Fisher, Gasquet et als. are plaintiffs and Mayor and Council of New Orleans are defendants, instituted in this Court and now in the records thereof under the No. 82,402 of the Docket thereof, Division "B", the Hon. Fred D. King; five hundred and thirty three (533) school certificates, Transcript in matter of the City of New Orleans vs. John Fisher, Tutor et al. and Comptroller's Report are forwarded in the Original.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this 16th day of March in the year of our Lord, one thousand nine hundred and eight and in the one hundred and thirty-second year of the Independence of the United States of America.

(Signed) L. W. GUNTHER,
D'y Clerk.

86 *Bill of Complaint.*

Filed May 11, 1896.

No. 12516.

Mrs. M. M. FISHER
versus
CITY OF NEW ORLEANS et al.

To the Hon. Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

Mrs. M. M. Fisher herein joined and authorized by her husband, M. M. Fisher, of Cuba, and citizens of the Kingdom of Spain, brings this her bill against the City of New Orleans, a corporation created by the laws of Louisiana and a citizen thereof:

And thereupon your oratrix complains and says:

That she recovered a judgment in this hon. court against the board of school directors, a corporation created by the laws of the State of Louisiana and a citizen thereof, in the sum of more than ten thousand dollars, as more fully appears by the record of said suit;

That your oratrix obtained two other judgments against the same school board, before the civil district court for the parish of Orleans, amounting in the aggregate to many thousand dollars;

That all of said judgments are now final; that they are made payable out of the school taxes levied by the city of New Orleans prior to 1879.

Your oratrix avers that the school taxes out of which said judgments have been made payable, is a trust fund levied by the city of New Orleans, for the purpose of paying the expenses of the public schools of the city of New Orleans.

1st. That the city of New Orleans has failed to collect the said taxes punctually and that it was through her fault and negligence

that the same remains uncollected and by reason of her
87 neglect she has become liable for the amount of taxes yet remaining uncollected.

2nd. Your oratrix further complains and says that said taxes, under the law, carried interest at the rate of ten per cent per annum and that the city of New Orleans has never paid to the school board any of the interest due on said taxes, but she has misapplied and diverted the same to other unlawful uses.

3rd. Your oratrix further avers that the school board created the obligation against said school taxes, by virtue of contracts which were legally entered into and your oratrix was protected by the Constitution of the United States from any impairment of her contract.

That in violation of this constitutional right, the State of Louisiana passed act 82 of 1884, which directed that the property of delinquent tax-payers should be sold for what it would bring and that all taxes due thereon should by virtue of said sale be cancelled.

That by reason of said law, the city of New Orleans allowed the property on which the school taxes were due to be sold for State taxes, and she caused the city taxes, including the school taxes, to be cancelled; that she was thus guilty, 1st. As a delinquent trustee for not having enforced the collection of the said tax; and 2d. For having failed to protect the interest of your oratrix at said State tax sale; that the cancellations thus made amount to many thousands of dollars.

4th. That the said city of New Orleans at various times passed ordinances cancelling and annulling the said taxes and remitting the interest thereon;

That your oratrix is unable to give the exact amount of each kind of violations of her obligations by the trustee, and it is absolutely necessary to make the city of New Orleans account for the various amounts which have been lost to your oratrix through the
88 unfaithfulness of said trustee.

That the board of school directors to whom the city of New Orleans should account have refused to demand such an account and will continue to do so and your oratrix would be left without a remedy.

That the fund which the city of New Orleans administers seems now to be insufficient to satisfy the demands of all the creditors who are entitled to be paid out of the same.

Your oratrix further avers that her judgments are made directly payable out of the school taxes levied prior to 1879 and she has an equitable lien there against enforceable before a court of equity.

She further avers that under the law her certificates which are merged in her judgments have been under the law, received by the city of New Orleans, directly in payment of the school taxes without the intervention of the board of school directors.

That for those reasons your oratrix brings her bill against the City of New Orleans and the board of directors of the city schools of New Orleans for an account.

Your oratrix brings this bill for herself and all parties similarly

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situated who are willing to appear and contribute to the costs thereof, they being too numerous to be made parties hereto.

May it please your honors to grant unto your oratrix a writ of subpœna to be directed to the City of New Orleans, through its mayor and to the school board of the city schools of New Orleans, E. B. Kruttschnitt thereby commanding them and each of them, on the first Monday in June, 1896, under the penalties therein to be limited personally to appear before this hon. court then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide, perform such further orders, direction and decree that this hon. court may make, and to give a full, fair and perfect account of all the school taxes
89 collected by the city of New Orleans for the years 1873, 1874, 1875, 1876, 1877 and 1878; of all the interest received thereon by said city and never accounted for, of all the taxes which were not collected for want of proper enforcement, and which have since been cancelled both sales made by the State tax collectors and by ordinance adopted by the city council; and your oratrix further prays for all general and particular relief as shall seem agreeable to equity and good conscience.

(Signed) LOUQUE & POMES,
Solicitors.

Answer of City of New Orleans.

Filed March 12th, 1897.

No. 12516.

Mrs. M. M. FISHER
vs.
CITY OF NEW ORLEANS et al.

The Answer of The City of New Orleans, the Defendant, to the Original and Supplemental Bills of Complaint of Mrs. M. M. Fisher and Her Husband, Complainants.

To the Honorable the Judges of the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana:

This defendant now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and uncertainties and imperfections in the said bills contained, and not waiving, but especially reserving the rights under the demurrer hereinbefore filed by this defendant herein, for answer to said bills or to so much thereof as this defendant is advised it is material or necessary for it to make answer, answering, says:

I.

Defendant admits that oratrix recovered judgments against
90 the board of school directors, a corporation of the State of Louisiana, and a citizen thereof, both in this honorable court

and in the civil district court for the parish of Orleans as is set forth in oratrix's bill of complaint and records annexed thereto and referred to therein.

II.

Defendant admits that all of said judgments are now final and are payable as decreed and provided for in the said judgments.

III.

Defendant denies that the school taxes out of which said judgments have been made payable is a trust fund levied by the city of New Orleans for the purpose of paying the expenses of the public schools of said city.

IV.

Defendant denies that it has ever failed to collect said taxes punctually, and denies that any of the same remain uncollected, and denies if that any of the same remain uncollected, they so remain by reason of any negligence on the part of this defendant, and denies that defendant is liable at all for the amount of any such taxes yet remaining uncollected, if any such there be.

V.

Defendant admits that the city of New Orleans has never paid to the school board any interest which she may have collected on any back taxes, and defendant denies that any such interest, if same has ever been collected, was due to the school board, and defendant denies that she has ever misapplied or diverted to unlawful uses any interest that she may have collected from delinquent tax-payers or back taxes, and defendant avers and shows that by express provision of law all interest which she may collect on any back taxes is especially set aside for certain purposes and cannot by her be used for school purposes or for any other purposes than that commanded by law.

91 VI.

Defendant denies that the school board created the obligations against the school taxes, set forth in oratrix' bill of complaint, by virtue of any contracts legally entered into, and denies that the oratrix has any right to invoke the protection of the Constitution of the United States herein, and denies that the provisions of the same regarding impairment of contract have been in any manner violated by this defendant.

VII.

Defendant denies that act No. 82 of 1884 was passed in violation of any constitutional right of oratrix in the premises, and defendant declares that whatever was done by the State of Louisiana in passing the said act, if it was done, was within the legislative authority, and the said taxes and legislative provisions were subject to change, amendment and repeal by the same authority which created them, and defendant shows and avers that the city of New

Orleans had no authority or control over the action of the legislature in the premises.

VIII.

Defendant denies that the city of New Orleans allowed any property on which school taxes were due, to be sold for said taxes, and denies that she caused the city taxes, including the school taxes, to be cancelled.

IX.

Defendant denies that she has been or is guilty as a delinquent trustee for not having enforced the collection of said taxes, denies that she ever was a trustee in the matter, denies that she ever failed to enforce the collection of any taxes which it was her duty to enforce, denies that it ever was her duty to protect the interests, if any she had, of oratrix, at said tax sales, denies that oratrix had
92 any such interest and denies that there were any such tax sales.

X.

Defendant denies that any cancellations amounting to many thousands of dollars, or to any amount, were made by reason of said sales as set forth in oratrix' bill of complaint.

XI.

Defendant denies that the city of New Orleans passed ordinances cancelling and annulling any taxes, or remitting any interest thereon, but if any taxes were so cancelled or remitted, defendant avers the same was done by authority of law or by judgment or a competent court. Defendant denies that there was or is any obligation on the part of the city to account either to the school board or to the oratrix for any taxes, moneys or appropriations such as are set forth in oratrix' bill of complaint.

XII.

Defendant denies that it was the duty of the school board to call this defendant to account, and denies that the school board or the oratrix herein has any cause of action against this defendant for such an account. Defendant denies that there was any privity between the school board and this defendant, or between Mrs. Fisher and this defendant. And further answering defendant says, that if any such cause of action for an accounting ever did exist in favor of said school board or of said oratrix, the same was effective and executory in the year 1880, and became actionable and exigent in the year 1880, and in the years following the year 1873 up to 1879 inclusive. That said action of accounting was personal to said school board and could only be exercised and availed of by the said school board, which action is prescribed by the lapse of ten years from and after each of the said years, and that oratrix has no right or cause of action in the premises.

XIII.

Defendant denies that there is any fund now administered, or which ever was administered by the city of New Orleans, derived either from appropriations, taxes, or money said to be due said school board, and denies that if there is or was any such fund,
93 that the said school board or oratrix has any rights in the premises.

XIV.

Defendant admits that the judgments of oratrix are payable as stipulated in said judgments, but denies that oratrix has any equitable lien enforceable against the city of New Orleans before a court of equity by reason thereof.

XV.

Defendant denies that under the law were the services which she alleges have been merged in her judgments ever received by the city of New Orleans directly in payment of the school taxes without the intervention of the board of school directors.

XVI.

Defendant denies that the city of New Orleans has at various times for the taxes due for the years during which oratrix' claim is alleged to have arisen, sold for taxes and purchased in satisfaction thereof a number of houses and lots, and particularly, denies that any school taxes are due and payable on any such property, if any such has been bought, and denies that if any such property has been bought, any resulting trust has, under the law, followed said property, and denies that oratrix would in any event, be entitled to have the value of said real estate realized upon, or the rents accounted for by the city of New Orleans.

XVI.

Defendant denies that the city of New Orleans purchased houses and properties, as charged in oratrix' supplemental bill of complaint to the extent of $30,000, or any part thereof.

XVII.

Defendant denies that the city has any property upon which oratrix has any statutory lien under any law of the United States, and denies that she has allowed to go to waste any property of any description which is or has been in her possession, and denies that oratrix is entitled to have a receiver appointed to take charge of any property owned or held by this defendant.

94 XVIII.

Defendant denies that any acts which have been done by her are contrary to equity and defendant denies that the oratrix has any right or reason to invoke the equitable jurisdiction of this honorable court.

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Further answering, defendant shows that there does not appear in the bills of complaint of oratrix herein any allegation of any indebtedness by the city of New Orleans to the said school board, and that without having made said allegation oratrix is without right to proceed against this defendant herein.

Further answering, defendant shows and avers, that it has been decreed in the judgments of oratrix herein sued on, and in other suits of a similar nature, by other parties, against the city of New Orleans, that oratrix and such other complainants have no cause of action against the city of New Orleans on account of the claims of the character sued on in the judgments hereinbefore referred to.

Defendant denies that there is any other matter, cause or thing in the said complainant's original and supplemental bills of complaint, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied; and this defendant, considering the premises aforesaid, humbly prays this honorable court that all the demands contained in the original and supplemental bills of complaint of oratrix herein be rejected and dismissed; and defendant humbly prays to be hence dismissed with reasonable costs and charges in its behalf most wrongfully sustained.

And defendant prays for all special, equitable and general relief and orders herein, as this honorable court may deem just, proper and equitable herein.

(Signed) JAMES J. McLOUGHLIN,
Assistant City Attorney, Solicitor for Defendant.
(Signed) W. C. FLOWER, *Mayor.*

Walter C. Flower, being duly sworn, deposes and says
95 that he is mayor of the City of New Orleans, the defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) W. C. FLOWER, *Mayor.*

Sworn to and subscribed before me this 11th day of March, 1897.
(Signed) P. ALPH. RABOUIN,
Not. Pub.

Report of Clark Steen of the Standing of the Schools, Referred to in Complainant's Note of Evidence.

Filed January 22, 1898.

Expenditure of Schools, 1873.

Receipts.

Receipts from State treasurer	$153,142.34
Receipts from city of N. O. from March 25, 1873, to March 2, 1876	309,872.12
Rec'd from school board, Carrollton	369.86

Expenditures.

Teachers' salary	$3,577,577.69	
Rents	35,536.25	
Porters & Portresses	24,032.00	
School-house repairs and supplies	31,077.16	
Sec'y and employees of board	4,511.73	
Books, stationery and printing	4,698.07	
Law charges and expenses	2,926.35	
Transferred to—		
Carrollton tax	369.86	
Schools 1 & 74 by resolution of school board, June 7, '76	2,655.21	
	463,384.32	463,384.32

96 *Tax Levied by City of N. O., ¼ of 10/00, for School Purposes for 1873.*

On an assessment of 135,891,300	$339,728.25	
Collected March 25, '73, to March 2d, '76	309,872.12	
Tax yet to — collected	29,856.13	
Cancellations	6,058.00	
Balance	$23,798.13	

Summary.

1874. Unliquidated	$64,980.45	
State portion as per judgment, 5th D. Court, No. 10,762	8,382.47	
		56,597.98
1875. Unliquidated	126,387.31	
State portion as per above	32,724.21	
		93,663.10
1876. Unliquidated	102,493.78	
State portion	41,407.48	
		61,086.30
1877. Unliquidated	2,300.36	
See above judgm't.		
1878. Unliquidated	14,890.56	
Unprovided, except by tax		211,347.38

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97 *Statement of Collection of Taxes, 1873 to 1878, for School Purposes, and of the Amount of Cash Received, and Also School Certificates Received from March 25th, 1873, to March 2nd, 1876.*

Year.	Tax collected.	Cash received.	Certificates received.	Total cash and certificates.
1873.....	$309,872.12	$309,872.12	.....	$309,872.12
1874.....	302,741.91	284,281.57	$31,141.89	315,423.46
1875.....	276,106.57	250,786.95	30,382.88	281,169.83
1876.....	266,967.26	255,432.52	7,109.43	262,541.95
1877.....	198,261.13	191,159.46	931.68	192,091.14
1878.....	200,182.82	185,500.04	426.11	185,926.15
Total Tax.	$1,554,131.81	$1,477,032.66	$69,991.99	1,547,024.65
Total cash and certificates.	1,547,024.65			
Amt. on hand Nov. 1st, '95	7,107.16			

School Expenditures, 1874.

Rolls.	Rents.	Portresses.	Teachers.	Totals.
January	$2,989.70	$1,996.30	$31,249.41	$36,235.41
February	2,889.70	1,995.00	31,603.30	36,488.00
March	2,819.70	2,025.00	31,848.00	36,692.70
April	2,989.70	2,015.55	31,706.34	36,711.59
May	2,866.05	2,015.00	31,603.45	36,484.50
June	2,844.70	2,040.00	32,322.57	37,207.27
July	2,486.35	2,050.00	32,264.55	36,800.90
August	2,486.35	2,050.00	32,264.55	36,800.90
September	2,594.70	2,010.00	32,067.60	36,672.30
October	2,594.70	2,040.00	32,601.36	37,236.06
November	2,594.70	2,046.25	32,537.55	37,178.50
December	2,584.70	2,041.00	32,536.69	37,162.39
Total.....	32,741.05	24,324.10	384,605.37	$441,670.52

98

Carrollton teachers paid		1,377.48
Salary sec'y, &c., Jan'y, '74 to Feb'y, '75.....		5,318.90
Books Furnished		2,989.59
Stoves grates, &c., paid at par.....	$1,519.05	
Bought for $132.00	440.00	
		1,959.05
Contingent expenses paid, face value.....	5,910.30	
Bought for $73.94	246.75	
		6,157.05

Printing and ads. paid, face value	1,487.08	
Bought for $9.28	32.00	
		1,519.08
Repairing Buildings		9,963.80
N. O. Sanitary & Fert. Co., paid for face val. Jan. to Sept.	4,125.72	
Bought Oct. for $132.77	457.83	
		4,583.55
Fuel		1,575.00
Total brought forward		441,670.52
Total expenditures		$477,114.02

99	Estimate of the expenses for public schools for yr. 1874 as forwarded by board to city council (Nov. 25, '73.)	Expenditures by board as per books of treasurer & rolls.
Rent of school building	$37,000.00	$32,741.05
	.....	1,377.48
Salaries of teachers	350,000.00	384,605.37
Salaries of portresses	24,000.00	24,324.10
Salaries of Secretary, &c	4,600.00	5,318.90
School books	2,500.00	2,989.59
	.....	1,959.05
Fuel, stoves, grates, &c	5,000.00	1,575.00
Brooms	3,000.00	.....
School furniture	10,000.00	.....
Blanks, Printing & Adds	4,000.00	1,519.08
Contingent	6,000.00	6,157.05
Repairs	10,000.00	9,963.80
Sanitary	.....	4,583.55
	$456,100.00	477,114.02

Estimates of Receipts by Board.

State of Louisiana	75,000.00
City of New Orleans	381,100.00
	$456,100.00

Possible Receipts.

From State as per estimate	75,000.00
From city of New Orleans as per tax levied, being ¼ of 1% on assessment of $130,954,456.00	327,386.14
	$402,386.14

OR COPY

Cash balance in La. Nat'l bank to the credit of schools, 1874, $61.14.

In addition to the sum of $401,700.75, liquidated by cash payments and certificates received for taxes of face value, there has been liquidated a further sum of $7,201.84 due to the purchase by the treasurer through instructions of board of certificate, amounting to $10,371.68 for $3,170.84 in cash.

Actual Receipts.

From State		77,794.33
City of New Orleans, tax 1874:		
Cash	$284,281.57	
Certificate	31,141.89	
		315,423.46
From State Carrollton Tax		369.86
From City of ——, Carrollton Tax		1,497.02
Transferred from other years		6,677.22
		$401,761.89

Condition of City Tax.

City tax levied	327,386.14
City tax Collected	302,741.91
	$24,644.23
Cancellations, &c.	6,840.43
	$17,803.80

100 The foregoing examination of accounts of schools, 1874, show—that the board of directors presented to the council of the city of New Orleans an estimate of expenditures for year 1874 amounting to $456,100.00 whilst the actual expenditures or liabilities, of said year was $477,114.02, or an exces of $21,014.02. The tax levied by the city of New Orleans, ¼ of 1%, if total was collected, would amount to but $327,386.14 thus being a deficit from this source, over estimate by board of $381,100.00 of $53,713.86.

School Expenditures for 1875.

Pay-rolls.	Rents.	Portresses.	Teachers.	Totals.
January	$2,564.70	$2,050.00	$32,515.80	$37,130.50
February	2,604.70	2,060.00	32,490.60	37,155.30
March	2,579.70	2,085.00	32,511.10	37,175.80
April	2,579.70	2,170.00	32,513.25	37,262.95
May	2,504.70	2,085.00	32,554.30	37,144.00
June	2,504.70	2,079.90	32,679.85	37,264.45
July	2,489.70	2,080.00	26,070.70	30,640.40
August	2,409.70	2,095.00	26,070.70	30,575.40
September	2,412.20	2,491.80	32,743.15	37,647.15
October	2,424.70	2,453.80	33,283.20	38,161.70
November	2,486.70	2,480.80	33,498.70	38,466.20
December	2,523.35	2,465.80	33,545.50	38,534.65
	$30,084.55	$26,597.10	$380,476.85	$437,158.50

Estimate of Receipts.

State of Louisiana	48,825.71
City of N. O., ¼ of 1%, tax on ass't of $119,288,504	298,221.26
	$347,046.97

Actual Receipts.

From State of Louisiana		48,825.71
From City of New Orleans:		
Cash	$250,786.95	
Certificates	30,382.88	
Total	$281,169.83	281,169.83
		$329,995.54

Add.

Repairs to leased building, p'd face value	3,110.00	
Purchased for $27.50	54.00	
		3,164.00
Stoves, grates and fuel	5,596.64	5,596.64
Salaries of secretaries, March 1875, to Feb., '76	4,600.20	4,600.20
Books free	.....	33.76
Cleaning & Sanitary ex., face value	3,661.92	
Purchased for $129.47	235.40	
		3,897.32
Contingent	.....	2,738.13
Printing, p'd face value	104.60	
Purchased for $9.42	18.50	
		123.10
School furniture		3,618.05
Total expenditures		$460,929.70

101	Estimate of expenditures by board.	Expenditures as per rolls-books of the treasurer.
Rent	$31,636.00	$30,084.55
Teachers	383,860.00	380,476.85
Porters, &c.	24,400.00	26,597.10
Repairs	5,000.00	3,164.00
Stoves, grates, fuel	5,000.00	5,596.64
Secretary	4,600.00	4,600.20
Free books	5,000.00	33.76
Sanitary	8,000.00	3,897.32
Contingent	6,000.00	2,738.13
School furniture	5,000.00	3,618.05
Music teacher	6,500.00	.....
Printing	1,504.00	123.10
	$486,500.00	$460,929.70

Cash b'ce to credit of schools, 1875..... $72.57

R COPY

In addition to the sum of 329,922.97 liquidated cash payments and certificates received for taxes, face value there has been liquidated a further sum of 354685, due to the purchase of certificates, amounting to $7,198.27 for $3,651.42 cash.

Condition of Tax.

City tax levied	$298,221.26
Collected	276,106.57
Outstanding	22,114.69
Cancellations	8,235.24
Still due	$13,879.45

School Expenditures, 1876.

Rolls.	Rents.	Portresses.	Teachers.	Totals.
January	$2,339.70	$2,469.80	$33,349.00	$38,158.50
February	2,363.70	2,450.80	32,796.50	37,611.00
March	2,339.70	2,476.80	32,727.85	37,544.35
April	2,288.70	2,509.80	32,716.00	37,514.50
May	2,338.70	2,499.80	32,869.85	37,708.35
June	2,314.70	2,449.80	32,869.90	37,684.40
July	2,394.70	.....	.....	2,394.70
August	2,344.70	.....	.....	2,344.70
September	2,199.70	2,449.80	32,679.90	37,329.40
October	2,199.70	2,449.80	32,900.80	37,550.30
November	2,199.70	2,451.80	32,874.95	37,526.45
December	2,299.70	2,451.80	33,497.40	38,248.90
Total	$27,623.40	$24,710.00	329,282.15	381,615.55

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Repairs	6,996.57
Stoves and fuel	1,397.90
Sec't'y's salary, March to Dec	3,833.50
Sanitary	4,237.47
Contingent	3,296.48
Furniture	3,101.42
Total brt. forward	381,615.55
Total expenditures	$404,478.89

	Estimate of expenditures by board.	Expenditures as per rolls & books of the treasurer.
Teachers and portresses	$352,570.00	$353,992.15
Rents	25,000.00	27,623.40
Repairs	8,000.00	6,996.57
Stoves & fuel	5,000.00	1,397.90
Secretaries	4,600.00	3,833.50
Sanitary expenses	5,650.00	4,237.47
Contingent	5,000.00	3,296.48
School furniture	3,000.00	3,101.42
	$408,820.00	$404,478.89

Estimate Receipts.

State of Louisiana, actual	43,784.27
City of New Orleans, tax ¼ of 1% on an assessment of $119,045,515.00	297,513.78
	$341,398.05

Actual Receipts.

State of Louisiana		$43,784.27
City of New Orleans:		
Cash	255,432.52	
Certificates	7,109.43	
		262,541.95
		306,226.22
Tax levied		297,613.78
Tax collected		266,967.26
		$30,646.52
Cancellations		11,712.04
		$18,934.48

Rolls.	Treasurer's department.	Secretary's office.	Supt's office.	Repairs.	Printing & advertising.	Supplies.	Sanitary.	Attorneys' fees.	Fuel.	Rents.	Portresses.
January	.....	.....	.....	.....	.....	.....	.....	.....	.....	$2,169.70	$2,456.60
February	.....	.....	.....	.....	.....	16.00	.....	.....	.....	2,369.70	2,456.80
March	.....	.....	.....	142.10	2.00	201.50	.....	.....	.....	2,269.70	2,456.80
April	.....	225.25	99.40	9.75	9.60	54.45	.....	.....	.....	1,301.80	1,462.08
May	$100.00 Contingent	219.37	101.50	141.75	50.45	127.58	.....	.....	.....	1,437.80	1,462.05
June	29.00	228.45	100.00	31.50	352.50	89.20	.....	.....	.....	1,369.80	1,462.05
July	462.00	207.25	100.00	145.05	25.00	.....	.....	.....	.....	1,354.80	735.70
August	150.00	190.00	100.00	253.50	49.90	22.09	.....	.....	.....	1,354.80	713.40
September ...	360.50	190.00	99.98	459.41	140.49	207.35	.....	.....	.....	1,348.80	729.60
October	149.25	190.00	98.30	355.00	117.06	989.25	25.00	.....	1,013.00	1,358.80	1,420.80
November	51.50	196.00	99.70	67.55	236.10	150.65	70.00	500.00	454.00	1,445.80	1,449.80
December	12.83	210.00	101.00	.....	117.50	21.65	70.00	250.00	.....	1,711.30	1,455.80
Total....	$1,315.08	1,856.32	$899.88	1,605.61	$1,094.60	1,879.72	$165.00	750.00	1,467.00	$19,482.80	$18,261.48

POOR

(January)	Teachers.	Totals.
January	33,705.90	38,332.20
February	33,722.15	38,564.65
March	33,843.20	38,934.30
April	20,176.76	23,339.09
May	20,187.45	23,827.95
June	20,193.45	23,855.95
July	.....	2,833.69
August	.....	2,833.69
September	.....	3,536.13
October	6,454.25	12,145.71
November	19,077.75	23,798.85
December	19,472.60	23,422.68
Totals	$206,833.51	$255,621.00

104 Add.

Secretary's salary, Jan., Feb., M'ch, not on rolls	$1,150.05
Sanitary ac. not on rolls	1,804.40
Contingent ac. not on rolls	1,340.55
Furniture ac. not on rolls	715.75
Repairs ac. not on rolls	1,040.50
Stoves, fuel acc't, not on rolls	2,233.75
Treasurer's office ac. not on rolls	800.00
	$9,085.00
Total br't forward	255,621.00
Total expenditures	$264,706.00

Receipts.

From State treasurer	$70,314.50
From city of New Orleans	191,154.07
	$261,468.57
Certificates rec'd for tax of 1877	931.68
Total receipts	$262,400.25

COPY

	Estimate of expenditures by board.	Expenditures as per rolls & books of treasurer.
		$18,261.48
Teachers and portr.	$354,500.00	206,833.51
Rents	27,500.00	19,492.80
Repairs	7,000.00	2,646.11
Stoves and fuel	3,000.00	3,700.75
Secretaries	4,600.00	3,006.37
Sanitaries exp.	4,000.00	1,969.40
Contingent	5,000.00	1,340.55
Furniture	3,000.00	715.75
Treasurer's dep't	.....	2,115.08
Sup't's office	.....	899.88
Printing	.....	1,094.60
Supplies	.....	1,879.72
Attorney's fees	.....	750.00
	$408,600.00	$264,706.00

Estimated Receipts.

State of Louisiana, actual	$70,314.50
City of New Orleans, tax 1/5 of 1% on an assessment of $109,669,889.00	*219,339.78
	$289,654.28

Actual Receipts.

State of Louisiana		$70,314.50
Cash	$191,159.46	
Cer-ificate	931.68	
		192,091.14
		262,405.64
City tax levied		*$219,339.78
Collected		198,261.13
		$21,078.65
Cancellations		5,636.78
		$15,441.87
Cash balance November 1st, 1895		$57.48

(Here follows Table, marked p. 105.)

POOR

Rolls.	Attorneys' fees.	Contingent.	Supplies.	Printing advertising
January	$83.35	51.50	342.74	255.3
February	83.35	45.00	481.06	27.9
March	83.30	11.25	675.39	2.2
April	.....	78.85	319.55	137.3
May	.....	.....	.....	13.9
June	.....	20.00	90.45	177.3
July	.....	2.50	27.20	42.6
Do.	.....	.....	.....	.....
August	250.00	100.00	29.20	214.8
Do.	.....	.....	254.82	41.3
September	250.00	185.00	218.91	209.4
October	.....	.....	.....	.....
November	.....	216.66	.....	.....
December	.....	485.00	.....	.....
Total	$750.00	$1,295.76	2,439.32	1,122.3

COPY

School Expenditures, 1878.

s.	Printing & advertising.	Fuel.	Sanitary.	Sec'y's office.	Sup't's office.	Furniture.	Repairs.	Rents.	Portresses.	Teachers.	Totals.
74	255.35	819.00	70.00	235.00	100.00	66.70	2,216.66	1,386.80	1,363.00	19,430.60	26,420.70
06	27.95	634.55	70.00	250.00	100.00	32.40	1,429.67	1,411.80	1,358.00	19,489.45	25,413.23
39	2.25	30.60	70.00	240.00	100.00	113.50	2,236.03	1,501.80	1,358.00	19,473.00	25,895.12
55	137.30	.....	70.00	245.00	100.00	199.35	259.65	1,322.80	1,345.00	19,580.15	23,657.65
..	13.95	.....	70.00	241.40	100.50	536.45	260.10	1,322.80	1,345.00	19,588.40	23,478.60
45	177.35	.....	70.00	241.85	100.00	39.30	41.98	1,322.80	1,345.00	19,569.70	23,018.43
20	42.60	.....	70.00	.....	.....	15.00	949.60	1,322.80	1,345.00	19,561.00	23,335.70
..	.....	.....	.....	240.00	100.00	.....	.....	.....	.....	.....	340.00
20	214.89	.....	70.00	.....	.....	46.00	6,116.70	.....	679.85	9,780.50	17,287.14
82	41.35	635.50	70.00	240.00	100.00	.....	167.50	1,332.80	679.80	9,784.00	13,225.77
91	209.40	.....	.....	240.00	100.00	1,132.92	626.80	1,233.15	1,315.00	19,219.00	24,800.18
..	.....	.....	70.00	245.00	100.00	.....	.....	1,390.15	1,335.00	19,219.00	22,359.15
..	.....	.....	70.00	240.00	95.70	.....	.....	1,330.15	1,333.00	20,372.45	23,441.30
.											316.66
.											310.00
..	.....	.....	70.00	240.00	70.00	.....	.....	1,395.15	1,363.00	19,802.75	23,115.90
32	1,122.39	2,119.65	$840.00	$2,898.25	1,166.20	$2,181.62	$14,304.69	$16,263.00	16,164.65	234,870.00	296,415.53

106 Add.

Attorney's fees, not on rolls	250.00
Secretary's office, not on rolls	66.56
Treasurer's office, not on rolls	1,200.00
	$1,516.66
Total br't for'd	296,415.53
Total expenditures	$297,932.19

Receipts.

From State Treasurer	$97,115.48
From city of N. O.	185,493.73
	$282,609.21
Certificates rec'd for tax of 1878	426.11
Total receipts	$283,035.32

	Estimates of expenditures.		Expenditures, rolls & books, treasurer.
Teachers' salaries	$231,288.00		$234,870.00
Portresses	17,544.00		16,164.65
Rents	17,256.00		16,263.00
Sup't's office	1,200.00		1,166.20
Treasurer's office	1,200.00		1,200.00
Secretary's office	3,000.00		2,964.91
Supplies, brooms, &c.	2,200.00		2,439.32
Stationery, printing, &c.	2,500.00		1,122.39
Fuel	3,150.00		2,119.65
Sanitary ex'g	850.00		840.00
Stoves and repairs	1,500.00	Cont'g't	1,295.76
Furniture repairs	12,000.00	Att'y's Fees	1,000.00
			2,181.62
Repairs to schools	10,000.00		14,304.69

Schools, 1878.

State of Louisiana, "actual"	$97,115.48
City of N. O. 1/5 of 1% on an ass't of $111,147,245.00	222,294.49
	$319,409.97
Actual receipts, State of La.	97,115.48

Actual receipts, city of N. O.:		
Cash	$185,500.04	
Certificates	426.11	
		185,926.15
		$283,041.63
Tax levied		$222,294.49
Collected		200,182.82
		$22,111.67
Cancellations		6,339.81
Outstanding		$15,771.86
Cash balance		$47.32

Statement of the Total Expenditures for Public Schools for the Years 1873 to 1878, Inclusive, and of the Amounts Liquidated, Amounts Due, and of Taxes Outstanding to Liquidate.

		Liability.	Taxes uncollected.	Deficit.
Schools, 1873:				
Total expenditures	$463,384.62			
Total receipts	463,384.62			
			(*)23,798.13	
Schools, 1874:				
Total Expenditures	477,114.02			
Amounts Liquidated	412,072.43			
	65,041.59			
Less cash balance	61.14			
		64,980.45	17,803.80	47,176.65
Schools, 1875:				
Total expenditures	460,929.70			
Amounts liquidated	333,469.82			
	126,459.88			
Less cash balance	72.57			
		126,387.31	13,879.45	112,507.86
Schools, 1876:				
Total expenditures	408,820.00			
Amounts liquidated	306,251.95			
	102,568.05			
Less cash balance	74.27			
		102,493.76	18,934.48	835,559.30

		Liability.	Taxes uncollected.	Deficit.
Schools, 1877:				
Total expenditures	264,706.00			
Amount liquidated	262,348.16			
	2,357.84			
Less cash balance	57.48			
		2,300.36	15,441.87	(*)13,141.51
Schools, 1878:				
Total expenditures	297,932.19			
Amount liquidated	282,994.31			
	14,937.88			
Less cash balance	47.32			
		14,890.56	15,771.86	(*)881.30
		311,052.46		
Total reduction of taxes from 1873 to 1878			105,629.59	
				243,243.81
By cancellations, judgments, &c, $44,822.30 less excess (excess in red ink)				37,820.94
Total deficit				$205,422.87

108 CLARK STEEN, witness sworn and examined on behalf of complainants, testified as follows:

Direct examination by Mr. LOUQUE:

Q. What is your present position?
A. I am with the dock commission.
Q. What position did you occupy previous to that?
A. Previous to that I was secretary to the mayor of New Orleans.
Q. Mayor Fitzpatrick?
A. Yes sir.
Q. What time did you commence your employment under Mayor Fitzpatrick?
A. In April, 1892.
Q. What did you do before that?
A. I was book-keeper in the treasurer's office.
Q. How long were you book-keeper there?
A. From August, 1890, to 1892.
Q. Did you occupy any previous position to that in the city hall?
A. I did.
Q. What position?
A. From 1881 to 1884 I was in the treasurer's office, in 1885 I was in the comptroller's office, '84 and '85.
Q. You are perfectly familiar, then, with the manner and mode of doing business with the city of New Orleans, both in the comptroller's and treasurer's offices?
A. Yes sir.
Q. You have seen the books, handled the books and know all about them?
A. Not so much in the comptroller's office as in the treasurer's office.
Q. Have you had occasion to be appointed an expert to examine the accounts between the city of New Orleans and the school board at any time?
A. Yes, sir, I have made up a statement of the taxes collected and the amount of taxes, from '73 to '78, amount of taxes collected.
109 Q. Look on there and see if you recognize the report that you made to the court after your appointment?
A. Yes sir, this is the original report.
Q. As drawn up by you?
A. Yes sir.

Counsel for complainant offers in evidence a copy of the original report referred to by witness and made by him to be marked 13, which it is agreed will be accepted by the city if upon examination it is found to be a correct transcript of the original.

Q. In this report which you have made the court, when *do* the school tax of '71 and '73——
A. I do not think I have '71.
Q. I will ask you for '73, when did the collection of taxes for 1873 cease to have been paid over by the city of New Orleans to the school board?
A. I see here March 25th, 1873, to March 2nd, 1876.

Q. On that date the city ceased paying the school tax for 1873 to the school board?

A. They quit proportioning the tax for March 2nd, 1876, so far as the tax of 1873 was concerned.

Q. Have you not had occasion to examine the reports which are printed and published at the end of every six months by the comptroller's office, to show what they have done with these taxes of 1873, tax of 1873?

A. I know for a fact from my employment in the comptroller's office, that the tax of '73 is not divided but it is just bulked.

Q. In other words, the city has kept the whole of the collections since the 2nd of March, 1876.

A. Yes sir; I know about that.

Q. You have a condensed statement in this report which you hold before you, made to the court, which total amounts of various years of the school tax have been collected by the city of New
110 Orleans for the years '73 to March 2nd, '76?

A. Yes sir.

Q. 1874, '75, '76, '77, '78 to November 1st, 1895?

A. Yes sir.

Q. Please tell us what is the total amount of taxes collected for school purposes by the city of New Orleans during these various years in total—before you answer that question, how did you get at the school tax?

A. This you, will find here, I think. The State law demanded the city of New Orleans to levy a certain tax for school purposes which the city of New Orleans did in each of those years.

By Mr. McLOUGHLIN:

Q. What you took, though?

A. I took the tax levied. I know for a fact what tax was collected for all——

By Mr. SAUNDERS:

Q. You took the ordinance?

By Mr. McLOUGHLIN:

Q. Did you go by the ordinance or the State law?

A. I know that the ordinance complied with the State law. I know when the taxes of these several years, '74, '75, '76, '77 and '78, as tax collector and book-keeper I know how the divisions were made. There was so much of the total tax set aside for school purposes and deposited to a special account for school purposes.

By Mr. LOUQUE:

Q. What is the total amount of the school tax collected?

A. $1,554,131.81.

Q. What was the proportion of cash which was collected?

A. Cash received and deposited to the credit of schools, $1,477,032.66.

Q. What was the proportion of school certificates which were cancelled, received in payment of taxes and cancelled?

111 A. They were received for taxes, $69,991.99.

Q. Does that include all school certificates received by the city of New Orleans in payment of school taxes up to the first of November, 1895?

A. It included all that appeared on the treasurer's books.

Q. All the city received on the treasurer's books?

A. Yes sir.

Q. Didn't they put everything on the treasurer's books?

A. I suppose they did.

Q. You don't suppose they were received and not entered on the books?

A. No, sir; I can't say about that; I only know about the books.

Q. Deducting the money paid to the school board in cash, adding the certificates of schools cancelled, and deducting this sum total of these two figures from the amount of the tax, what would be the difference?

A. I find a difference of $7,107.16.

Q. What is that difference?

A. $7,101.76.

Q. Yes; but what does that represent, does it represent a deficit or a surplus?

A. There was $7,107.16 turned over more than collected.

Q. What date?

A. From 1878 to 1895.

Q. By looking over this report will you state whether every year there is an excess of collection or whether in some there is an excess of disbursements over collections?

A. You take the tax of '73, that appears to have been all cash. There was $309,872.12 collected and there was $309,872.12 deposited to the credit of schools, 1873.

Q. That is up to what time?

A. Up to March 2nd, 1876.

112 Q. Since that time, so far as the tax of 1873 is concerned——

A. I don't find any credit on the books of the treasurer's office.

Q. For the tax of 1874?

A. The total tax collected was $302,741.91—cash deposited $284,281.57. Certificates of 1874 received for taxes $31,141.89, making a total credit of $315,423.46. I want to explain this in this way—while you find for 1874 the collection was $302,741.91 cash and certificates you received was $315,423.46 that occurs in this way—a person had a right if they came in to pay 1874 tax, they had the right and the treasurer was compelled to receive school certificates of 1876 or 1877 in payment of the school portion of the tax of 1874. You will find '74 and '75 is in excess that way, while '76, '77, '78 are just the reverse.

Q. There is an excess of $7,100.00 according to this report, of money collected over money paid to the school board?

A. I don't know that. There is a discrepancy between the certificates and cash received from the total amount collected from 1873

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to 1878, whether that is in certificates or in cash it has not been accounted for.

Q. There is a surplus there of $7,100.00 for money collected over money paid?

A. No, there appears to me a deficit.

Q. I don't see that.

A. The tax is $1,554,131.81 and $1,547,024.65 deposited to the credit of schools and the certificates taken——

Q. If you collect $1,554,131.81——

A. And only pay $1,547,024.65, that is not any surplus.

Q. What do you call it?

A. I don't pay over enough.

Q. Therefore you owe to the school board $7,107.16?

A. Yes sir. But you asked me if it was not a surplus.

113 Q. Yes, a surplus collected over amount paid?

A. Yes sir. I want to be correct about it.

Q. When you say deficit you don't mean to say that the city of New Orleans had paid out more money than she collected, according to this?

A. It is just to the contrary. $7,107.16 is the difference between the amount of taxes collected and the amount of cash deposited to the credit of schools and certificates received in payment of school taxes of those years.

Counsel for complainants offers in evidence the whole of that report, to be substituted by a copy subject to the same objection of counsel for the city.

Q. Have you had occasion to examine the comptroller's reports from 1881 to 1895, so far as the school tax is concerned?

A. I have done that at your request recently.

Q. Let us see the result of your examination.

By Mr. McLoughlin:

Q. What years has the city paid over to the school board more money than she has collected?

A. '74 and '75.

Q. Those two years she paid over more?

A. No, not paid over more, that excess appears in this way as I explained.

By Mr. Louque:

Q. You don't understand Mr. McLoughlin's question. He asked you what years has the city paid over more money——

By Mr. McLoughlin:

Q. There are some years that the city paid to the school board more money than she has received for taxes——

A. This statement will make it appear that the school tax of '74 while only $302,741.91 there was $315,423.46 in cash and

114 certificates of those years redeemed by the city of New Orleans.

Q. I understand now, those certificates mean the certificates of '74?
A. Yes sir.
Q. So that for the school expenses incurred during '74 the city has overpaid about $13,000?
A. Yes sir.
Q. She has paid out $13,000?
A. I can't say that she has paid out because the city might have received this in certificates for tax of '76.
Q. Then this statement is not so accurate?
A. Yes, sir, it shows exactly, with my explanation I think it ought to, because the tax of '74 was paid in cash or in certificates at the option of the tax-payer, but the law compelled the treasurer to receive those certificates of '76 or '77 or '78 in payment of the tax of '74 at that time, therefore the cash and certificates received does not balance with the total amount of taxes collected for that year or for any of the years.
Q. So that the accounts do not show what years certificates received were issued for, in other words, if you received during a year in payment of school tax, $50,000 school certificates, does that report show what year those certificates were originally issued for?
A. Yes, sir, I have that here. In 1874 the city collected cash—out of $302,741.91. $284,281.57 that was cash received by the city and deposited to the credit of the school board—in addition to that cash she received, the city took in for taxes $31,141.89 of school certificates of '74.
Q. Then, that is 1874?
A. Yes sir.
Q. Then consequently that year you received certificates of '74 and cash which added together exceed the school proportion?
115 A. No, sir, not the proportion.
Q. The collection of taxes——
A. The school tax collected by the city——
Q. In other words, the city is short $13,000 of that year?
A. Yes, sir. You take the total levy of '74 which was $327,386.14 the total collections were $302,741.91, so it is not more than was levied for school purposes, but the schools for '74 got credit in cash and certificates for more than the tax collected by the city of New Orleans and it was in that manner in receiving certificates of '74 for taxes for other years——

By Mr. LOUQUE:

Q. That is the principal of the tax?
A. Yes, sir.
Q. Now, to go back again. The question is—have you had occasion to examine the com-troller's reports in relation to the school tax from '81 to '96?
A. I did so at your request.
Q. Now, will you please state how these reports which contain the budgets of the city of New Orleans and the budget of the revenues, also the rate of taxation, how the rate of taxation was divided for the years '71, '73, '74, '75, '76, '78?

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A. Either one of these reports will show that.

Q. Do these reports show it as a fact?

A. Take the report of January 1st to June 30, 1895, from page 98 to 108 gives the tax levy of the city of New Orleans.

Q. As a matter of fact, was the tax levy just according to this division which was made in that report?

A. Yes sir.

Q. For these years '71 to '78?

A. Yes sir.

Q. Was there any tax levy for '72 called by the name of 1872?

A. No, sir, there was no tax called by the name of 1872 or by the city of New Orleans.

116 Q. The taxes are '71, '73, '74——

A. Then run regularly up to the present year.

Counsel for complainant offers in evidence, in the first place, the comptroller's reports from '81 to '96 inclusive—is there one of them missing?

A. The latter half of '82 from July to December, '82.

Q. You don't make any calculation on that?

A. No, sir.

Q. You left that out?

A. Yes, sir.

Q. As a matter of fact did the city of New Orleans ever pay to the school board any of the interest which had been collected by them on the taxes?

A. No, sir, not to my knowledge.

Q. Will you please state if you have made a calculation of the interest on the school tax from '81 to '96, on school taxes collected by the city?

A. Yes, sir, that is the report I made at your request. School taxes collected January, '81, to December, 1896.

Q. Will you please state what time you stopped counting interest during what period, these reports were made every six months?

A. Yes, sir.

Q. Did you count the interest at the end of the six months or at the beginning?

A. I have made a statement, that shows exactly how many years and months I calculated the interest.

Q. You might as well tell us?

A. Well, I can't.

Q. Please state that this is the amount of interest not charged on the amount, charged to the city on the amount that she has received, but charged on the school taxes?

117 A. I have taken extracts from the books here. The date the tax was collected, then I have made up an estimate of the interest on that portion of the tax from date of delinquency until date of payment or until near the time of payment.

Q. But that is the interest which the tax payers was to pay to the city of New Orleans?

A. Yes, sir, the interest that the tax-payer—whether the city collected it or not this don't show.

Q. What is the amount that you have figured for various years?

Counsel for complainant offers the report in evidence.

A. For 1874, the interest would be four——

By Mr. SAUNDERS:

Q. What interest is that?

A. The tax-payer's interest on the 31st of March of each year—now the city collected some of the interest but all she didn't collect, but it appeared against the tax.

Q. And that interest that was paid by the tax-payers is shown on that statement?

A. No, sir, this statement shows what interest would accrue on that portion that belonged to the school at the date of payment.

By Mr. LOUQUE:

Q. As a matter of fact, some of that interest was paid to the city of New Orleans?

A. Yes, sir, but very little.

Q. Others not paid?

A. Yes, sir.

By Mr. SAUNDERS:

Q. In other words, this is an attempt to charge the city with interest that it should have collected, but did not?

A. Whether she did not, I don't know. Some of it has been collected. A small part of this interest was collected.

Q. Give us the years.

118 A. '74, $4,732.75; '75, $6,465.75; '76, $5,847.58; '77, $3,839.70; '78, $4,434.57; total $24,859.25.

Counsel for complainants offers in evidence the report made by Mr. Steen and marked Exhibit 14, subject to the objections of counsel for City of New Orleans.

By Mr. SAUNDERS:

Q. Did you state there was outstanding and unpaid $211,000.00 in school certificates?

A. No sir, I didn't state that because I was only on the tax. If you will take up my report you will find—for instance, you take '74. Estimates of receipts by the board was $456,100, possible receipts from the State as per estimate, $75,000; city of New Orleans as per tax levy being ¼ of one per cent. on the assessment of $327,386.14, making the total possible receipts $402,386.14.

By Mr. MCLOUGHLIN:

Q. Are you familiar with the way these things were paid?

A. All these school certificates?

Q. Yes. Did the school board ever pay any certificate directly itself?

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A. Oh, yes sir, because they used to receive cash.

Q. They would pay them with cash?

A. Yes sir.

Q. Did they ever buy up any certificates for less than dollar for dollar?

A. The report will show that. Paid face value $5,910.30 for $6,157 in certificates.

Q. They were in the habit of discounting their own certificates occasionally? A. Yes, sir, they bought them up.

Q. That was the school board that did that?

A. It was under the direction of the school board. These purchases were made by the treasurer who was the treasurer of
119 the city of New Orleans.

Q. Have you got anything in there of the poll taxes that were turned over to the school board, any statement of that?

A. I don't think so.

Q. You have there a judgment there, there is a judgment in connection to this report on which I suppose you figured?

A. That was a mandamus.

Q. Which adjudges that the State is responsible for 40% of certain certificates?

A. Yes sir.

Q. What years are those that the State was responsible for 40% of the outstanding——

A. It is under some act.

Q. I know the act. I want to see whether you can tell me what years they are.

A. For the following amounts——

Q. What years?

A. I am going to get to that. 12 and 9/10% of the amount of the certificate—for '75; 40 and 4/10% of the amount of the amount of the certificates for 1876 and for the full amount of the certificates for 1877, 1878 and 1879.

Q. That is the judgment saying the State is responsible for those percentages of those years?

A. Yes, sir.

120 UNITED STATES OF AMERICA,
State of Louisiana:

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the Parish of Orleans, do hereby certify that the annexed documents are true and correct copies of the originals on file and of record among the archives of my office in the matter entitled F. J. Gasquet vs. Board of Directors — the City Schools, under number 35156 of the docket of this honorable court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this eighteenth day of January, in the year of our Lord one thousand eight

hundred and ninety-seven, and in the 121st year of the Independence of the United States of America.

(Signed) PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is the clerk of said court, that the same is a court of record, having probate jurisdiction, and that the signature, Paul O. Guerin, clerk to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the 18th day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) F. A. MONROE, *Judge.*

I, Paul O. Guerin, clerk of the civil district court for the Parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now,
121 and was at the time of signing the same, presiding judge of the civil District court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court, this 18th day of January, 1897.

(Signed) PAUL O. GUERIN, *Clerk.*

(Six cancelled Law stamps.)

Petition.

Filed February 25th, 1892.

To the Hon. the Civil District Court for the Parish of Orleans:

The petition of Francis James Gasquet, who resides temporarily in this city and a citizen of the State of New York, respectfully represents:

That your petitioner is the owner and holder of a number of school certificates due to him individually and also transferred to him amounting to forty-six thousand seven hundred and sixty-two 06/100 dollars, as more fully appears by said certificates and a full list thereof, hereto annexed and made part hereof.

That said certificates were issued for the unpaid salaries of school teachers and expenses of maintaining the public schools of the city of New Orleans, for the years subsequent to 1872, and prior to January, 1879.

That the liability represented by said certificates was incurred by the Board of Directors of the City Schools, a corporation duly created by the laws of Louisiana, and a citizen of said State.

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That said certificates are made payable out of the school tax levied by the city of New Orleans prior to 1879; that said certificates are still due and remain unpaid.

122 Wherefore petitioner prays that the Board of School Directors of the City School- of the City of New Orleans, through E. B. Kruttschnitt, Esq., president thereof, be cited hereto and after due proceedings that judgment be rendered in favor of your petitioner and against the said board, for the sum of forty-six thousand six hundred and forty-two 06/100 dollars, with legal interest from judicial demand and all costs of suit, payable out of the school tax levied by the city of New Orleans, prior to 1879, and petitioner prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Att'y.*

Answer.

Filed March 2nd, '92.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Now comes into court The Board of Directors of the City School- made defendant herein and reserving the benefit of any and all exceptions to which it may be entitled for answer to plaintiff's petition denies all and singular the allegations in said petition contained.

Wherefore defendant prays to be hence dismissed with judgment in its favor and for costs.

(Signed) CARLETON HUNT,
City Att'y, ex Officio Att'y Board of Directors of the City School.

Civil District Court, Div. "B."

No. 35156.

Now into this hon. court comes The Board of Directors of City Schools, made defendant herein, and with leave of court first obtained for the filing hereof, and for supplemental and

123 amended answer to plaintiff's petition says:

That defendant reiterates the answer hereinafter filed, and for further and supplemental answer, says:

1st. That this defendant is not responsible for any of the acts had or done, nor any of the debts incurred by the board of school directors, which issued the certificates which are herein sued on, and that no judgment can be rendered against this defendant thereof.

2nd. That under the provisions of law regulating the former board of school directors, the school certificates which they issued could only be paid out of the funds, collected from the school taxes

of the various years set forth in plaintiff's petition and that the most ancient are required to be paid first before subsequent certificates can be paid, and subsequently, that a judgment in solido as prayed for by plaintiff, would be in violation of law.

Wherefore defendant prays for leave of court to file this supplemental and amended answer, and after due trial, that there be judgment in its favor and against plaintiff, dismissing this suit with cost, and defendant prays for general and equitable relief.

(Signed) E. A. O'SULLIVAN, *City Att'y.*

Order.

Let this supplemental and amended answer be filed as prayed for, and according to law.

New Orleans, May 2nd, 1892.

(Signed) FRED. D. KING.

F. A. GASQUET
vs.
BOARD OF DIRECTORS OF CITY SCHOOLS.

Now into this honorable court comes the Board of Directors of City Schools, and peremptorily excepts to this action, and
124 for cause of exception, says:

1st. That the plaintiff's petition sets forth no cause of action against this exceptor.

2nd. That this action, if any lies, is barred by the prescription of ten years.

Wherefor- exceptor prays that these exceptions be maintained and this suit be dismissed at plaintiff's cost.

E. A. O'SULLIVAN, *City Att'y.*

Civil District Court, Div. "B."

No. 35156.

F. A. GASQUET
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS.

Now comes defendant and pleads in defense of this action that the instruments herein sued on are prescribed by the prescription of five years.

Wherefore defendant prays that this plea be maintained and this suit dismissed at plaintiff's cost, and for general relief.

E. A. O'SULLIVAN, *City Att'y.*

Judgment.

The rule herein taken by plaintiff to have judgment rendered in accordance to the opinion of the Supreme Court herein, filed came on this day for trial.

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Present Louque & McGloin, attorneys for plaintiff; defendant absent and not represented.

When after hearing pleadings, evidence and counsel, the law and the evidence being in favor of the plaintiff and for the reasons orally assigned,

It is ordered that the said rule be made absolute and ac-
125 cordingly that the following judgment be rendered.

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, F. J. Gasquet, and against defendant, The Board of Directors of the City Schools, in the sum of forty-four thousand nine hundred and seventy-eight 74/100 dollars ($44,978.74/100) with legal interest from judicial demand and costs of suit payable out of the school taxes levied by the city of New Orleans prior to 1879.

That said Board of Directors of the City Schools do pay to plaintiff the aforesaid sum of forty-four thousand and nine hundred and seventy-eight 74/100 dollars ($44,978.74/100), upon the surrender of the certificates herein sued on by plaintiff and defendant to pay costs.

Judgment rendered March 20th, 1893.

Judgment signed April 17th, 1893.

(Signed) FRED. D. KING, *Judge.*

A true copy,

[SEAL.] (Signed) P. J. KELLY, *D'y Cl'k.*

Master's Report Upon Judgment in Favor of F. J. Gasquet.

Copied at page 34 of this Transcript.

Judgment in Favor of Mary Quinlan in Case of Mary Quinlan vs. Board of Directors of the City Schools, No. 53102, Civil District Court, Parish of Orleans.

Referred to in complainant's note of evidence and filed December 20, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify, that on the 26th day of November, 1897, judgment was rendered in this court in the following-entitled suit, in the words and figures following, to-wit:

(Cancelled law stamp.)

126 No. 35102.

MARY QUINLAN
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS.

This case came on for trial this day.
Present: Chas. Louque, Esq., for plaintiff, and J. J. McLoughlin, Esq., for defendant.
When after hearing pleadings, evidence and counsel, the law and evidence being in favor of plaintiff and for the reasons orally assigned by the court,
It is ordered, adjudged and decreed that there be judgment in favor of plaintiff Mrs. Mary Quinlan and against the Board of Directors of the City Schools for the sum of five thousand three hundred and seventy-three 78/100 dollars and costs.
Judgment rendered November 26th, 1897.
Judgment signed December 2d, 1897.
(Signed) T. C. W. ELLIS, *Judge*.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this second day of November, in the year of our Lord one thousand eight hundred and ninety-seven.
[SEAL.] (Signed) PAUL O. GUERIN, *Clerk*.

Judgment in Favor of Jean Pomes in Case of Jean Pomes vs. Board of Directors of the City Schools, No. 52950, Civil District Court, Parish of Orleans.

Referred to in complainant's note of evidence and filed December 20, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify, that on the 26th day of November, 1897, judgment was rendered in this court in the following-entitled
127 suit, in the words and figures following, to-wit:

(Cancelled law stamp.)

No. 52950.

JEAN POMES
vs.
BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS, PARISH OF ORLEANS.

This case came up for trial on this day.
Present: Chas. Louque, Esq., for paintiff; J. J. McLoughlin, Esq., for defendant.

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And after hearing pleadings, evidence and counsel, the law and the evidence being in favor of plaintiff and against the defendant and for the reasons orally assigned,

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Jean Pomes, and against the defendants, The Board of Directors of the Public Schools, Parish of Orleans, for the sum of six thousand three hundred and fifteen 73/100 dollars with legal interest from judicial demand until paid and all costs of suit, the whole payable out of the school taxes for the years prior to 1879, when collected by the city of New Orleans.

Judgment rendered November 26th, 1897.

Judgment signed December 2d, 1897.

(Signed) F. A. MONROE, *Judge.*

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this second day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) PAUL O. GUERIN, *Clerk.*

128 Judgment in Favor of Georgiana T. Young in Case of Georgiana Theresa Young, Wife of Philip J. Fredrichs, and al. vs. School Board, No. 12339, Civil District Court, Parish of Orleans.

Referred to in complainant's note of evidence and filed December 20, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify, that on the 26th day of November, 1884, judgment was rendered in this court in the following-entitled suit, in the words and figures following, to-wit:

(Cancelled stamp.)

No. 12339.

GEORGIANA THERESA YOUNG, Wife of Philip J. Friedrichs, and al.,
vs.
SCHOOL BOARD.

This case fixed this day.

It is ordered, adjudged and decreed that the City of New Orleans pay to the several pl'ffs herein:

Georgiana T. Young	$305.34
Lizzie G. Wheelright	155.88
Mary A. Sullivan	155.88
Francis Johnson, transferee of Mary O'Donnell	36.02
	$653.12

without interest and payable in accordance with sec. 2d of act No. 67 of 1884.

Judgment rendered Nov. 26th, 1884.

Judgment signed Dec. 2nd, 1884.

(Signed) F. A. MONROE, *Judge.*

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this first day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) PAUL O. GUERIN, *Clerk.*

129 Judgment in Favor of Mrs. Fortier in Case of Mrs. Fortier vs. Board of School Directors, No. 28801, Second City Court of New Orleans.

Referred to in complainant's note of evidence and filed December 20, 1897.

(Cancelled law stamp.)

STATE OF LOUISIANA:

Second City Court of New Orleans.

Hon. Gabriel Fernandez, Judge.

I hereby certify, that on the 22d day of October, 1897, judgment was rendered in this court in the following-entitled suit, in the words and figures following, to-wit:

No. 28801.

Mrs. MARY FORTIER

vs.

BOARD OF SCHOOL DIRECTORS FOR THE PARISH OF ORLEANS.

Claim filed June 23d, 1897.

Claim thirty-two dollars 19/100 cents as per petition and school certificate issued for November, 1876, to Miss M. Grace, 3d ass't in the Webster school.

Citation issued and served June 25th, 1897.

Supplemental petition filed July 5/97.

Citation waived.

Answer of Board of directors filed July 7th, 1897.

Notice of trial issued October 14th and served on 16, 1897.

This cause came on this October 22d, 1897, for trial; present, Chs. Louque, att'y for plaintiff; Jas. J. McLoughlin, att'y for defendant, when after hearing the law and the evidence and arguments of counsel,

It is ordered, adjudged and decreed that there be judgment in

OR COPY

favor of plaintiff, Mrs. Mary Fortier, duly authorized and
130 transferee and against defendants, The Board of Directors of the Public Schools of the Parish of Orleans for the sum of thirty-two 19/100 dollars, it having been proven on the trial of this case that the transfer of the certificate cannot be found, oral proof of transfer accepted by the court. Said judgment to bear interest at the rate of five per cent. per annum from June 23/97, and costs.

(Signed) G. FERNANDEZ, *Judge.*

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 19th day of November in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) CHAS. CUNEO, *Clerk.*

Court-house, 322 Exchange Alley.

EXHIBIT PETITION OF JOSE VENTA IN CIVIL DISTRICT COURT, PARISH OF ORLEANS.

Filed April 2nd, 1897.

Civil District Court, Division "E."

No. 35934.

JOSE VENTA
VS.
BOARD OF SCHOOL DIRECTORS.

Petition.

Filed May 26th, 1892.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Jose Venta, a citizen of the Kingdom of Spain, residing temporarily in New Orleans, respectfully represents:

That your petitioner is the owner and holder of a number of school certificates due to him individually and also transferred to him amounting to seventeen thousand three hundred and eighteen 46/100 dollars as more fully appears by said certificates and
131 a complete list thereof, hereto annexed and made part hereof.

That said certificates were issued for the unpaid salaries of school teachers and expenses of maintaining the public schools, for the years subsequent to 1872 and prior to January, 1879.

That the liability represented by said certificates was incurred by the Board of School Directors of this city, a corporation duly created by the laws of Louisiana and a citizen of said State.

That the same are made payable out of the school tax levied by the city of New Orleans prior to 1879.

That notwithstanding due demand the Board of Directors of the City Schools refuse to pay the same.

Wherefore petitioner prays that said Board of School Directors of the City Schools of the City of New Orleans be cited hereto and after due proceedings that the judgment be rendered in favor of your petitioner and against the said board for the sum of seventeen thousand three hundred and eighteen 46/100 dollars with legal interest from judicial demand and all costs of suit, payable out of the school tax levied by the city of New Orleans prior to 1879, and petitioner prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Attorney.*

Civil District Court, Division "E."

No. 35932.

JOSE VENTA
vs.
BOARD OF SCHOOL DIRECTORS.

Answer.

Filed August 4th, 1892.

Defendants, reserving their exceptions heretofore filed, and reiterating the same, deny all and singular plaintiff's allegations and they specially aver that the documents annexed to his petition were not issued in accordance with law and the city ordinances,
132 that defendants call for strict proof of the services, for which said certificates are alleged to have been issued; that no law or ordinances authorized the issuance of said certificates, and still less at the discretion or option of the pretended officer, who purports to have signed or indorsed the same, that no judgment can, in any event be rendered against defendants, with whom no funds have been lodged or deposited to pay such claims, even when duly authenticated and proven, and that the plaintiff's recourse, if he proves his claim satisfactorily, is against the trust fund under the administration of the city of New Orleans in accordance with the provisions of act- of 1873, No. —, and of 1874, No. —.

Wherefore respondents beg leave to file this their answer and to have plaintiff's demand dismissed with costs.

(Signed) E. A. O'SULLIVAN,
ALBERT VOORHIES,
Attorneys.

Order.

Let this answer be filed as prayed for.
New Orleans, August 4th, 1892.

(Signed) GEO. H. THEARD, *Judge.*

OR COPY

Judgment.

Civil District Court, Division "E."

No. 35932.

JOSE VENTA
vs.
BOARD OF SCHOOL DIRECTORS.

This case being submitted to the court for adjudication, and the law and evidence being in favor of plaintiff with the exception of the following certificate, for which judgment of non-suit is now rendered:

It is ordered that judgment be rendered in favor of plaintiff Jose Venta, and against the Board of School Directors for the City
133 Schools of New Orleans, La., for the sum of seventeen thousand and six 27/100 dollars, payable out of the school tax levied by the city of New Orleans, prior to 1879, with legal interest from judicial demand, i. e., May 26th, 1892, and costs of suit.

It is further ordered that judgment of nonsuit be entered as to the certificates of M. Sweeney for November, 1876—$53.64; Edmond Jones, $15—606, 8.94; M. O'Brien, 54—13, 98—40.02, M. L. Toad, 64—8,38, 55.62. G. Hodgkins, 48.35—6.23—42.12. A. Raymond, 14.40, 4.77—9.63. M. D. Cooper, 72.11—52.00. R. Wheeler, 18—5.96—1204. M. T. Lindsay, 25—8.28—16.72. M. Callahan, 36—14.54, $21.46.

Judgment rendered Feb'y 27th, 1894.

Judgment signed March 5th, 1894.

(Signed) GEO. H. THEARD, *Judge.*

UNITED STATES OF AMERICA,
State of Louisiana:

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans,

Do hereby certify that the foregoing four pages do contain a true and correct copy of the petition, answer, order and judgment in case number 35932, entitled Jose Venta vs. Board of School Directors of the docket of this honorable court, division E, Honorable Geo. H. Theard, judge. The original- of which are now on file in the archives of this honorable court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this first day of April, in the year of our Lord one thousand eight hundred and ninety-seven and in the one hundred and twenty-first year of the Independence of the United States of America.

(Signed) PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin
134 is the clerk of said court; that the same is a court of record, having probate jurisdiction, and that the signature, Paul O. Guerin, clerk, to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act—as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the first day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

(Signed) F. A. MONROE, *Judge.*

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this first day of April, 1897.

(Signed) PAUL O. GUERIN, *Clerk.*

Offerings on Behalf of Mrs. Mary A. B. Gage, Intervenor.

Master's reports, copies at page 32 *et sequitur,* and also at page 55 *et seq.* of this transcript.

Decree confirming master's report, copied at page 65 of this transcript.

Offerings on Behalf of U. Koen, Intervenor.

Master's reports, copied at page 32 *et seq.,* and also at page — *et seq.,* of this transcript.

Decree confirming master's reports, copied at page 65 of this transcript.

135 Judgment of the civil district court for the parish of Orleans, division "D," in the suit entitled Urban Koen vs. Board of Directors of the Public Schools of the Parish of Orleans, No. 53833 of the docket thereof, copied at page 53 et seq. of this transcript.

Waiver and consent on intervener's petition herein, copied at page 54 of this transcript.

Defendant's Offerings.

Copies of all the budgets of the city of New Orleans showing estimated revenues and expenditures, for the years 1871 to 1879, inclusive.

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Decree.

Decree Filed February 21, 1898.

Circuit Court of the United States for the Eastern District of Louisiana.

No. 12516.

Mrs. M. M. Fisher
vs.
City of New Orleans.

And this cause coming on, after full hearing of the parties and upon the bill, answer and master's report duly approved by the court and upon consideration thereof;

It is ordered, adjudged and decreed that the city of New Orleans, trustee of the special school taxes levied and collected for the years 1871 and 1878 inclusive be condemned to pay pl'ff and interveners the said taxes, received and collected by her as follows: Seventy-one thousand nine hundred and thirty-eight 78/100 dollars with five per cent. interest per annum on $71,139.60/100* from January 24th, 1881;* and on $799.18/100 from May 11th, 1896, until paid. And it is further ordered that this bill be retained
136 for a further accounting and such orders and decrees as may be necessary.

*This decree was amended by order of court, dated April 28th, 1898, so as to only allow interest on the amount recovered, to-wit: $71,139.60, from February 21, 1898, the date of said decree, instead of from Jan'y 24, 1881.

It is further ordered that after deducting and paying to the solicitor herein by preference and privilege such sum as may be allowed him hereafter, that the balance be distributed and paid pro rata, and up to their full claims to the following-named persons, to wit:

Mrs. M. M. Fisher, $11,094.87/100 with legal interest on $8,097.17/100 from May 22nd, 1897, with a credit of $1,893.09 paid on the — August 1894.

To the same $8,802.39/100, with legal interest on $7,401.69/100 from May 22nd, 1897.

And the further sum of $5,864.64/" with legal interest on $5,140.31/100 from May 22, 1897.

F. J. Gasquet the sum of $57,059.69/100 with legal interest on $44,978.74/100 from May 22nd, 1897.

Joseph Venta the sum of $21,297.72/100 with legal interest on $17,006.27/100 from May 22nd, 1897.

Mary Quinlan the sum of $5,373.78/100 and fifteen dollars ($15.00/000) costs with 5% interest from December 2nd, 1897.

Jean Pomes the sum of $6,315.73/100 with fifty dollars (50.-00/100) costs and legal interest from March 20th, 1897.

Georgiana T. Young, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell, $653.12/100 with ten dollars (10.00) costs.

Mrs. Mary Fortier the sum of $32.19/100 and five dollars costs ($5.00/100).

Mrs. A. B. Gage the sum of five hundred and fifteen 44/100 dollars with 5% int. from Nov. 30th, 1887 and $12.00 costs.

137 Widow E. F. Duclax the sum of two thousand and ninety 17/100 dollars and $81.00 costs.

U. Koen the sum of twenty-two thousand nine hundred and ninety-one 07/100 dollars and $27.10/100 costs; and that the city of New Orleans pay all costs of this suit.

Judgment rendered and signed February 21st, 1898.

New Orleans, La., February 21st, 1898.

(Signed) CHARLES PARLANGE, *U. S. Judge.*

Opinion.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1898.

No. 747.

CITY OF NEW ORLEANS, Appellant,
vs.
JOHN FISHER, Tutor, et als., Appellees.

Appeal from the Circuit Court of the United States, Eastern District of Louisiana.

Before Pardee and McCormick, Circuit Judges, and Boarman, District Judge.

This suit was commenced by a bill brought by Mrs. M. M. Fisher, joined and authorized by her husband, John Fisher, of Cuba, and citizens of the Kingdom of Spain, against the City of New Orleans; and in said bill it was alleged that she recovered a judgment in this hon. court against the Board of School Directors, a corporation created by the laws of the State of Louisiana and a citizen thereof, in the sum of more than ten thousand dollars, as more fully appears by the record of said suit. "That your oratrix obtained two other judgments against the same school board before the civil district court for the parish of Orleans, amounting in the aggregate

138 to many thousand dollars.

That all of said judgments are now final, that they are made payable out of the school taxes levied by the City of New Orleans prior to 1879.

Your oratrix avers that the school taxes out of which said judgments have been made payable is a trust fund levied by the City of

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New Orleans for the purpose of paying the expenses of the public schools of the City of New Orleans.

1st. That the City of New Orleans has failed to collect the said taxes punctually and that it was through her fault and negligence that the same remains uncollected, and by reason of her neglect she has become liable for the amount of taxes yet remaining uncollected.

2nd. Your oratrix further complains and says that said taxes, under the law, carried interest at the rate of ten per cent, per annum, and that the City of New Orleans has never paid to the school board any of the interest due on said taxes, but she has misapplied and diverted the same to other unlawful uses.

3rd. Your oratrix further avers that the school board created the obligation against said school taxes, by virtue of contracts which were legally entered into and your oratrix was protected by the Constitution of the United States from any impairment of her contract.

That in violation of this constitutional right, the State of Louisiana passed act 82 of 1884, which directed that the property of the delinquent tax-payers should be sold for what it would bring and that all taxes due thereon should by virtue of said sale be canceled.

That by reason of said law, the City of New Orleans allowed the property on which the school taxes were due to be sold for State taxes, and she caused the city taxes, including the school taxes, to be canceled; that she was thus guilty: 1st. As a delinquent
139 trustee for not having enforced the collection of the said tax; and 2d. For having failed to protect the interest of your oratrix in said State tax sale; that the cancellations thus made amount to many thousands of dollars.

4th. That the said City of New Orleans at various times passed ordinances cancelling and annulling the said taxes and remitting the interest thereon.

That your oratrix is unable to give the exact amount of each kind of violations of her obligations by the trustee, and it is absolutely necessary to make the City of New Orleans account for the various amounts which have been lost to your oratrix through the unfaithfulness of said trustee.

That the Board of School Directors, to whom the City of New Orleans should account, have refused to demand such an account, and will continue so to do, and your oratrix would be left without a remedy.

That the fund which the City of New Orleans administers seems now to be insufficient to satisfy the demands of all the creditors who are entitled to be paid out of the same.

Your oratrix further avers that her judgments are made directly payable out of the school taxes levied prior to 1879, and she has an equitable lien there against—enforceable before a court of equity.

She further avers that under the law, her certificates, which are merged in her judgments, have been, under the law, received by the City of New Orleans directly, in payment of the school taxes, without the intervention of the Board of School Directors.

That for those reasons your oratrix brings her bill against the City of New Orleans and the Board of Directors of the City Schools of New Orleans for an account.

Your oratrix brings this bill for herself and all parties similarly situated who are willing to appear and contribute to the costs thereof, they being too numerous to be made parties hereto.

140 May it please your honors to grant unto your oratrix a writ of subpoena to be directed to the City of New Orleans, through its mayor, and to the School Board of the City Schools of New Orleans, E. B. Kruttschnitt, thereby commanding them and each of them, on the first Monday in June, 1896, under the penalties therein to be limited, personally to appear before this hon. court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide, perform such further orders, direction and decree that his hon. court may make, and to give a full, fair and perfect account of all the school taxes collected by the City of New Orleans for the years 1873, 1874, 1875, 1876, 1877 and 1878; of all the interest received thereon by said city and never accounted for, of all the taxes which were not collected for want of proper enforcement, and which have since been canceled, both sales made by the State tax collectors and by ordinance adopted by the city council; and your oratrix further prays for all general and particular relief as shall seem agreeable to equity and good conscience."

On June 1, 1896, the City of New Orleans, through its city attorney entered its appearance. Afterwards, on August 24, 1896, a so-called supplemental bill was filed, wherein it was alleged:

"Your oratrix avers that the City of New Orleans has at various times seized for the taxes due, for the years during which her claim arose, a number of houses and lots, and has purchased the same in satisfaction of the taxes due, and that a resulting trust has, under the law, followed the said property, and your oratrix is entitled to have the value of said real estate realized upon and the rents accounted for by the City of New Orleans.

Your oratrix is unable to give an exact statement of the houses and properties so purchased by the City of New Orleans, but she avers that the same largely exceeds thirty thousand dollars;

141 that said city allows said property to go to waste and your oratrix avers that she has a statutory lien on all of said property under the laws of the United States, and that she is entitled to the appointment of receiver to take charge of same and realize under order of court.

That the acts complained of are contrary to equity and your oratrix has no rights save before the equitable jurisdiction of this hon. court.

Your oratrix brings this, her bill, for her own benefit and for all other persons in her same situation.

May it please your honors to grant unto your oratrix a receiver to take charge of the property purchased by the City of New Orleans for the taxes 1874 to 1879, inclusive, with such powers as receivers generally possess and more especially to be mentioned in the order

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appointing him, and your oratrix further prays that this supplemental bill be filed and that the City of New Orleans, through the mayor thereof, be ordered to show cause on such day as this hon. court may fix, why the prayer herein for receiver should not be granted and your oratrix prays for general relief."

General demurrers were filed to the original and amended bills which were afterwards overruled. On March 12, 1897, the City of New Orleans filed answer, substantially, as follows:

I.

"Defendant admits that oratrix recovered judgments against the Board of School Directors, a corporation of the State of Louisiana, and a citizen thereof, both in this honorable court and in the civil district court for the parish of Orleans, as is set forth in oratrix's bill of complaint and records annexed thereto and referred to therein.

II.

Defendant admits that all of said judgments are now final
142 and are payable as decreed and provided for in the said judgments.

III.

Defendant denies that the school taxes out of which said judgments have been made payable is a trust fund levied by the City of New Orleans for the purpose of paying the expenses of the public schools of said city.

IV.

Defendant denies that it has ever failed to collect said taxes punctually, and it denies that any of the same remain uncollected and denies that if any of the same remain uncollected, they so remain by reason of any negligence on the part of this defendant, and denies that defendant is liable at all for the amount of any such taxes yet remaining uncollected, if any such there be.

V.

Defendant admits that the City of New Orleans has never paid to the school board any interest which she may have collected on any back taxes, and defendant denies that any such interest, if same has ever been collected, was due to the school board, and defendant denies that she has ever misapplied or diverted to unlawful uses any interest that she may have collected from delinquent tax-payers or back taxes, and defendant avers and shows that by express provision of law all interest which she may collect on any back taxes is especially set aside for certain purposes and cannot by her be used for school purposes or for any other purpose than that commanded by law.

VI.

Defendant denies that the school board created the obligation against the school taxes set forth in oratrix's bill of complaint by virtue of any contracts legally entered into, and denies that the

oratrix has any right to invoke the protection of the constitution of the United States herein, and denies that the provisions of the same regarding impairment of contracts have been in any manner
143 violated by this defendant.

VII.

Defendant denies that act No. 82 of 1884 was passed in violation of any constitutional rights on oratrix in the premises, and defendant declares that whatever was done by the State of Louisiana in passing the said act, if it was done, was within the legislative authority, and the said taxes and legislative provisions were subject to change, amendment and repeal by the same authority which created them, and defendant shows and avers that the City of New Orleans had no authority or control over the action of the legislature in the premises.

VIII.

Defendant denies that the City of New Orleans allowed any property on which school taxes were due, to be sold for said taxes, and denied that she caused the city taxes, including the school taxes, to be canceled.

IX.

Defendant denies that she has been or is guilty as a delinquent trustee for not having enforced the collection of said taxes, denies that she ever was a trustee in the matter, denies that she ever failed to enforce the collection of any taxes which it was her duty to enforce, denies that it ever was her duty to protect the interests, if any she had, of oratrix, at said tax sales, denies that oratrix had any such interest, and denies that there were any such tax sales.

X.

Defendant denies that any cancellations amounting to many thousands of dollars, or to any amount, were made by reason of said sales, as set forth in oratrix's bill of complaint.

XI.

Defendant denies that the City of New Orleans passed ordinances cancelling and annulling any taxes, or remitting any
144 interest thereon, but if any taxes were so cancelled or remitted, defendant avers the same was done by authority of law or by judgment of a competent court. Defendant denies that there was or is any obligation on the part of the city to account either to the school board or to the oratrix for any taxes, moneys or appropriations such as are set forth in oratrix's bill of complaint.

XII.

Defendant denies that it was the duty of the school board to call this defendant to account, and denies that the school board or the oratrix herein has any cause of action against this defendant for such an account. Defendant denies that there was any privity between the school board and this defendant, or between Mrs. Fisher

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and this defendant. And further answering, defendant says, that if any such cause of action for an accounting ever did exist in favor of said school board or of said oratrix, the same was effective and executory in the year 1880, and became actionable and exegent in the year 1880, and in the years following the year 1873 up to 1879, inclusive. That said action of accounting was personal to said school board, and could only be exercised and availed of by the said school board, which action is prescribed by the lapse of ten years from and after each of the said years, and that oratrix has no right or cause of action in the premises.

XIII.

Defendant denies that there is any fund now administered, or which ever was administered by the city of New Orleans, derived either from appropriations, taxes, or money said to be due said school board, and denies that if there is or was any such fund, that the said school board or oratrix has any rights in the premises.

XIV.

Defendant admits that the judgments of oratrix are payable as stipulated in said judgments, but denies that oratrix has any equitable lien enforceable against the City of New Orleans
145 before a court of equity by reason thereof.

XV.

Defendant denies that under the law were the services which she alleges have been merged in her judgments, ever received by the city of New Orleans, directly in payment of the school taxes without the intervention of the board of school directors.

XVI.

Defendant denies that the city of New Orleans has, at various times for the taxes due for the years during which oratrix' claim is alleged to have arisen, sold for taxes and purchased in satisfaction thereof a number of houses and lots, and particularly denies that any school taxes are due and payable on any such property, if any such has been bought, and denies that if any such property has been bought, any resulting trust has, under the law, followed said property, and denies that oratrix would, in any event, be entitled to have the value of said real estate realized upon, or the rents accounted for by the city of New Orleans.

XVI.

Defendant denies that the city of New Orleans purchased houses and properties, as charged in oratrix' supplemental bill of complaint, to the extent of $30,000 or any part thereof.

XVII.

Defendant denies that the city has any property upon which oratrix has any statutory lien under any law of the United States, and denies that she has allowed to go to waste any property of any

description which is, or has been in her possession, and denies that oratrix is entitled to have a receiver appointed to take charge of any property owned or held by this defendant.

XVIII.

Defendant denies that any acts which have been done by her are contrary to equity, and defendant denies that the oratrix has any right or reason to invoke the equitable jurisdiction of this
146 honorable court.

Further answering, defendant shows that there does not appear in the bills of complaint of oratrix herein any allegation of any indebtedness by the city of New Orleans to the said school board, and that without having made said allegation oratrix is without right to proceed against this defendant herein.

Further answering defendant shows and avers that it has been decreed in the judgments of oratrix herein sued on, and in other suits of a similar nature, by other parties, against the city of New Orleans, that oratrix and such other complainants have no cause of action against the city of New Orleans on account of the claims of the character sued on in the judgments hereinbefore referred to."

Replication having been filed to this answer on March 22, 1897, the court ordered a reference to a master, "to take a full, true, fair and perfect account of all the funds, principal and interest received by the city of New Orleans from the school taxes levied in 1871, 1873, 1874, 1875, 1876, 1877 and 1878, of all interest remitted illegally, of all properties purchased for said taxes, as more fully prayed in the bill and the supplemental bill filed herein and to that effect the parties shall produce before said master all books, papers, documents to be examined and which may be necessary or proper in the premises."

At this stage of the proceeding numerous intervenors, claiming to have judgments against the school board in all respects similar to the judgments of Mrs. Fisher, intervened, asking to share in the proceeds of any amounts found due by the city of New Orleans on the accounting.

May 22, 1897, the master reported as follows:

"1st. The city of New Orleans owes the school board for the principal of school taxes collected and not paid over from the years 1871 to 1878, both inclusive, the amount of $23,180.03.

2d. The proportion of the interest actually collected by the
147 city of New Orleans on the taxes of the years 1871 to 1878, both inclusive up to January 1st, 1897, to which the school board will be entitled, if it is entitled to the same proportion of the interest as of the principal of said taxes, is $48,758.75.

It is a question of law whether the school board is entitled to any part of the interest. I think it is—the interest as a mere accessory of the principal belongs in my opinion to the same person to whom the principal belongs. Accordingly in my opinion the amount the city of New Orleans now owes to the school board for taxes collected, and for interest on the taxes collected, is as above stated, $71,938.78.

3rd. Properties bought in.

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The complainant abandoned the attempt to show that the city owed anything on account of properties purchased for taxes.

4th. Interest illegally remitted.

The complainant claims that the city should be further charged with interest on the portion of the taxes accruing to the school-tax fund, whether such interest was actually collected by the city or not. In view of the great length of time that has lapsed, and the almost impossibility of proving now whether the interest was collected or not, and in view of the fact that under the assessment-rolls there always is an uncollectible amount of interest, I do not think that the city ought to be charged with the interest which she is not shown to have collected. No evidence of any kind was adduced before me on this subject. It was not shown that any part of the uncollectible interest could have been collected or was illegally remitted. I, therefore, find that the city is not chargeable with the calculated amount of interest not collected.

By agreement of the parties, the fees of the experts herein were fixed at two hundred and fifty dollars ($250.00) to each of
148 them, or five hundred dollars ($500.00) to the two. The bill of R. H. Carter, the stenographer, for evidence taken in this case is $21.50.

I further find that the following parties have proved their claims against the fund herein, by judgments rendered in their favor against the school board, in the civil district court for the parish of Orleans, namely:

M. M. Fisher	$11,094.87
" " "	8,802.39
" " "	5,864.64
F. J. Gasquet	57,059.69
Jose Venta	21,297.72."

This report was accompanied by two exhibits showing the methods by which the amounts collected by the city and due the school board had been ascertained.

March 31, 1897, the complainant with several intervenors filed exceptions to the master's report, as follows:

"First exception. That the master failed to reserve the rights of these plaintiffs and intervenors to the interest money collected by the city of New Orleans, for the school fund since January 1881.

Your exceptors aver that in the bill of complaint herein, it was averred that the city of New Orleans had remitted a large amount of interest to the tax-payers and an attempt was made to hold the said city liable for said interest which it was averred was illegally remitted.

That on an examination of the accounts your exceptors discovered that the grea-est deficit came not from the interest illegally remitted, but from a contract made by the city of New Orleans in 1881 with the civil sheriff, by virtue of which all the interest accrued on the taxes was given and allowed to the sheriff as a
149 part consideration of his services.

That the city of New Orleans had no power or right under

the constitution to increase the compensation of any officer, and said contract was *ultra vires* as trustee, and not binding on the *cestui que trust.*

That your exceptors were delayed already so long by litigation in the enforcement of their claim that they preferred that their right to further accounting should be reserved, than to file a supplemental bill with the permission of this honorable court; that, therefore, the rights of your exceptors to a further accounting on that head should have been reserved by the master and should be so now reserved by this hon. Court.

Second exception. Your exceptors aver that they found it extremely difficult and a work of great magnitude to arrive at the properties purchased by the city for the taxes, and for the time being your exceptors were not able to get at the correct description of said properties.

That the officers of New Orleans are busy with the regular duties, and your exceptors did not deem it expedient at the present juncture to enforce their rights to an account of said properties, and their rights should be reserved.

Third exception. That the master failed to allow any interest on the moneys received by the city of New Orleans from the time the same was payable.

That your exceptors are entitled to interest with an annual rest, according to the rules and principles of equity and jurisprudence; but they will content themselves with simple interest, reserving their rights to a further account when found necessary."

And on June 7, 1897, the City of New Orleans filed exceptions to the report of the master, as follows:

"Defendant excepts to that part of the report of the master
150 wherein he expresses his opinion that the interest on taxes is a mere accessory of the principal, and belongs to the person to whom the principal belongs, and that, therefore, in his opinion, the city of New Orleans owes the school board for taxes collected and interest collected. Exceptor excepts to this on the ground that:

1st. It was no part of the master's duty, under his reference, to decide this question or to express any opinion upon the question of law involved therein, but in the event that the court overrules this exception and holds that such was his duty, then, and in that case, the City of New Orleans excepts to his conclusions of law, and asserts that, on the contrary, his conclusion is erroneous; that the interest does not follow the taxes, and does not belong to the party to whom the taxes belong.

Defendant excepts to the statement of the master that the amount reported as collected out of the school taxes from 1871 to 1878, inclusive, is due by the city to the school board or to the board of liquidation, at any time, since its collection."

On June 27, 1897, the City of New Orleans filed what it denominated an exception to the jurisdiction of the court *ratione materia* and *personae*, therein averring "that plaintiff's petition contains no averment that the suit could have been maintained by the assignors of the claim sued upon by Mrs. M. M. Fisher in the suit which

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forms the basis of this action." And on July 1, 1897, the City of New Orleans filed an alleged plea in abatement to the same purport as the above-entitled exception. This exception and this plea were afterwards stricken from the files as irregular and not filed in accordance with the rules. Thereafter, the City of New Orleans offered in open court to file a plea further attacking the jurisdiction of the court, which leave was refused; and, finally, on January 22, 1898, the case came on for final hearing upon the bill, answer, replication, exhibits, proof and testimony and master's report. Whereupon,

February 21, 1898, the court rendered judgment in favor of
151 the complainant and intervenors (with other details not necessary to recite) as follows:

"It is ordered, adjudged and decreed that the city of New Orleans trustee of the special school taxes, levied and collected for the years 1871 to 1878, inclusive, be condemned to pay pl'ff and intervenors the said taxes, received and collected by her, as follows: seventy-one thousand nine hundred and thirty eight 78/100 dollars with five per cent. interest per annum on $71,139 60/100 from January 24th, 1881, and on $799 18/100 from May 11th, 1896, until paid; and it is further ordered that this bill be retained for a further accounting and such orders and decrees as may be necessary."

On April 23, 1898, the City of New Orleans filed a petition for a rehearing on numerous grounds, which was ordered filed and fixed for hearing. Pending the rehearing, the November term, 1897, of the circuit court adjourned and the April term, 1898, was opened, at which term the court passed upon the petition for rehearing, as follows:

"Whereupon and on consideration whereof, it is ordered that a rehearing in this cause be and the same is hereby refused, and the court of its own motion orders that the final decree rendered herein on February 21, 1898, be and the same is hereby amended so as to only allow interest on the amount recovered, to-wit: $71,139.60, from February 21, 1898, the date of said decree, instead of from January 24, 1881, as heretofore allowed.

The clerk will note this amendment on the margin of said decree."

Subsequent to the decree and prior to the decision upon the rehearing, a plea in abatement on the ground of alienage was put in by the City of New Orleans to the effect that M. M. Fisher being a citizen of Spain, is unable to prosecute this suit, and the suit

should be abated, because a state of war existed between
152 the Kingdom of Spain and the United States of America and all the subjects and citizens thereof.

There was a demurrer to this plea of alienage on various grounds, but finally in the opinion of the court a sufficient answer was made thereto by proof that the complainant Fisher was not a citizen of Spain but was a citizen of Great Britain. From the decree of the circuit court, both parties have appealed.

PARDEE, circuit judge, delivered the opinion of the court:

There are fourteen assignments of error on the part of the City of New Orleans, many of which are argumentatively stated, but

which we will consider in order, disregarding those argued in the briefs but not specifically assigned.

The first assignment of error is as follows:

It was error for the court to decree judgment against the city for any part of the taxes of 1871, for the reason that the evidence shows that no part of complainant's claims arose during the year 1871, and further that the act of the legislature which directed the city to impose a special tax of ¼% was passed in the year 1873; therefore could not affect the taxes of 1871.

Furthermore, it is error for the court to allow this decree against the city for taxes of 1871, for the reason that the complainant does not claim any share in the taxes of 1871, or any interest thereon either in her original or supplemental bill, and it was error for the court to allow her more than she claimed. Consequently the amount declared due out of taxes for 1871, to-wit: seven thousand eight hundred and twenty-one 17/100 dollars, and the delinquent interest of taxes of 1871, nine thousand three hundred and thirty-two 81/100 dollars, were allowed in error, and should be deducted."

The grounds stated in this assignment form no part of
153 the exceptions filed to the master's report, and it can hardly be said that the judge below erred in this respect, when his attention does not appear to have been called to it. Under article 254 of the constitution of 1879 and under act 49 of 1880, the taxes due the school fund previous to 1879 constitute but one fund. Fisher vs. School Board of the City of New Orleans, 44 An. 184; Gasquet vs. School Board, 45 An. 342; Fisher vs. School Board, 48 An., 1077. The record shows that the complainants' judgments are made payable out of the school taxes levied by the city of New Orleans prior to 1879. The prayer of the bill is for a full account and for general relief, and the order of reference specifies the school taxes levied in 1871 and is not complained of. The objection, if good, which we do not admit, comes too late.

The second assignment of error is as follows:

"This being a suit for an accounting, the court erred in giving judgment against the city for money that she never collected, in that the judgment included the sum of eleven thousand nine hundred and thirty-three 27/100 dollars, which the master's report states is a discount allowed by the city to the tax-payer for payment of school taxes, and as the bill only claims and asks that the city be compelled to pay over the actual amount of cash collected, and as this money was never collected, we submit that it was error for the court to order it paid over. This being only a suit for an accounting, judgment cannot be had in the bill for anything but money actually collected."

The question raised in this assignment does not appear to have been raised by exception to the master's report, and we fail to find in the master's report any reference to the special sum of $11,933.27 as a discount allowed by the city to tax-payers for the payment of school taxes. The act of 1874, No. 41, page 78, which provided for rebates or discount on taxes paid in full prior to the 20th
154 of March in each year, expressly provided that no discount should be made upon school taxes. The matter herein urged

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is probably one of the details embraced in the special accountant's report upon which the master's report was made up. We are not disposed to follow the question through the exhibits, even if counsel should point the way. The assignment of error is not well taken.

The 3d assignment of error is as follows:

"The evidence shows that the full amount of money collected for 1874 school taxes was turned over to the school board (see testimony of Clark Steen and his report offered in evidence by complainant), and such being the case, it is urged that it was error for the court to make the city pay over any more money out of the taxes of 1874, the city having already paid over all that she owes on that year. Such being the case, the amount of $10,816.59 and $209.50, proportion of interest on school taxes for 1873, and the proper proportion of principal for school taxes for 1874 (to ascertain the amount of which a re-reference to the master is necessary), are not due to the school board. While it is true that all back taxes prior to 1879 are lumped into one fund, we urge that in calling for an accounting, it is sufficient for the city to show, in order to be discharged as far as the taxes of any particular year are concerned, that she has paid over the full amount of taxes due the school board for that year, and having done this, with the taxes for 1874, it is error for the court to order her to turn over any more of the taxes for that year," raises more matter involved in the master's report, of which no complaint was made in the exceptions filed to the report, and the assignment need only be noticed, because it contains an admission that all the back taxes prior to 1879 were lumped into one fund.

The 4th assignment of error raises the question of the com-
155 plainant's remedy at law. A general demurrer was filed to the bill, and the same was overruled and no assignment of error covers the same, unless this 4th assignment be so considered. The counsel for the City of New Orleans say, in support of this assignment, "a reading of the judgment," which is found in the transcript, "will show your honors that it is such a nature that by garnishment proceedings she could have obtained all needed relief under that judgment and that that was all that was required and necessary to collect anything due her by the city or anything due the school board by the city. Consequently, as she has an adequate remedy at law, it is wrong to permit her to proceed in equity." On the other side, it is said, "solicitors for complainant have been litigating during these ten years and the only relief to be had is through the equity court."

We consider the bill as a creditors' bill to reach equities existing between the school board of the city of New Orleans and the city of New Orleans in which an accounting between the two parties is necessary in order to ascertain the indebtedness of the city to the city school board. No such relief can be obtained at law.

The 5th assignment of error is to the effect that complainant has no right to sue the city of New Orleans because her judgments are against the school board only and she does not allege that the city owes the school board anything.

We think the issue of indebtedness of the city of New Orleans to the school board is sufficiently asserted in the bills and is clearly put at issue in the answer.

The 6th assignment of error is as follows:

"The evidence shows that in suit No. 12060 the city was garnished on July 12th, 1894, under a *fi. fa.* and answered under oath that she had one thousand eight hundred and ninety-three 9/100 dollars to the credit of the school fund prior to 1879 on that
156 date, and having paid that amount over to Mrs. Fisher under her judgment, it was error for the court not to hold that said payment to and acceptance by Mrs. Fisher, complainant herein, estopped her from traversing said garnishment, as she is doing by this proceeding, and the court should have held such payment and acceptance as an estoppel and *res judicata* concerning all collections made up to July 12, 1894."

The proposition enunciated in this assignment of error is that an issuance of execution and garnishuent proceedings thereunder operate an estoppel to a creditor's bill founded on the same judgment and seeking an accounting between the judgment debtor and the garnishee. If the general proposition should be conceded, its applicability in the present case is not apparent. In our view, the garnishment proceedings shown in this record were against the treasurer of the city and *ex officio* treasurer of the school board—a stakeholder—under which at law no accounting as between the city of New Orleans and the school board could have been had.

The 7th assignment of error is thus stated:

The court erred in approving the finding of the master that the interest or penalty on delinquent taxes formed a part of the taxes and should be turned over to the board. But even though this was correct (which course is not admitted) we hold that the court erred in ordering the city to pay over the penalty on the taxes which she had already paid over. In any event she should not be compelled to pay over the penalty on any taxes, except on those taxes which are still in her possession. In other words, the master's report shows twenty-three thousand one hundred and eight 3/100 dollars of principal, and we submit that only the penalties on this twenty-three thousand one hundred and eight 3/100 dollars should be turned over, and not the penalties on the taxes that were
157 turned over to the board years ago."

The assignment refers to the finding of the master's report holding the city liable for interest collected upon back school taxes. The master said: "It is a question of law whether the school board is entitled to any part of the interest—I think it is. The interest as a mere accessory of the principal belongs to the same person to whom the principal belongs." Under the law the school taxes carried ten per cent. interest per annum from the day they became delinquent. It was a penalty for non-payment of the taxes. This interest, or penalty, for delayed payment of school taxes formed no part of the city's proper revenues; the city, in collecting the same, was acting as a trustee for the school board. Delay in payment of taxes operated to the prejudice, not of the city but of the school fund

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and its creditors. We are unable to find any authority in law or morals for the city to appropriate to itself this interest. To allow such an appropriation would be to reward the city for its own negligence in the collection of the taxes due the school fund. We fully agree with the master that "the interest as a mere accessory of the principal belongs to the same person to whom the principal belongs." The assignment argumentatively claims that if the city is liable for the interest on taxes collected, which taxes have not been paid over, it is not liable for interest on taxes which it (the city) had collected, and, when paying over the taxes, had withheld. We are unable to see any difference in principle between the two cases.

The 8th assignment of error complains of the action of the court below in striking from the records two certain documents called pleas to the jurisdiction *ratione materia et personæ*, which were filed irregularly after the case had been put at issue, and after the master's report and exception had been filed thereto. The certificate of counsel is not attached to these documents, and they had no
158 proper place in the files of the court. At the same time it is to be noticed that the right to file new or amended pleadings after the pleadings have been regularly made under the rules is a matter within the discretion of the chancellor and not subject to review. Another serious objection to these alleged pleas is that, in so far as they attack the jurisdiction of the court in the original suit in the circuit court in which Mrs. Fisher recovered a judgment against the city school board, and which is the basis of this creditors' bill, it seems clear to us that the pleas are objectionable. Mattingly vs. Nye, 8 Wall. 370.

The 9th assignment of error does not appear to be based on any affirmative ruling of the court below. It appears that leave was asked to file a plea to the jurisdiction and an order to show cause issued, but no ruling made in the premises.

The 10th assignment is to the effect that it was error not to have allowed the plea of prescription made in the answer of the defendant, for, as it is claimed, the cause of action arose in 1873 and subsequent years, the last year being 1879, and the same was prescribed by ten years. In the case of Gasquet vs. The Board of City School Directors, 45 An., 342, the supreme court of Louisiana, in passing on a plea of prescription in favor of the school board, said:

"We think the pleas of prescription are not well founded. Act 36 of 1873 makes it very clear that the claims evidenced by these certificates were not payable absolutely or at any particular time. They are payable only out of the revenues of the years for which they are issued, and only when said revenues are collected and in the manner therein provided; and the act further declared that 'no writ of *fi. fa.* or mandamus shall lie for seizure of any school moneys, or to direct or enforce its paying out otherwise than
159 in the manner and sequence required in this act.

This law formed a part of the contracts out of which the claims arose and deprived the claimants of any legal remedy to enforce payment except out of particular revenues when actually collected and covered into the treasury.

The case is very much stronger and clearer than that of King Bridge Co. vs. Otoe Co. 124 U. S., 459, in which the Supreme Court of the United States held that county warrants, payable only when there are funds in the treasury applicable thereto, are not actionable until the money for its payment is collected, and, therefore, not subject to the statute of limitations except from the same time."

The principles here declared are in many respects applicable to the case in hand.

The judgments sought to be enforced in this case were rendered since 1890 and the school certificates sued on are in judgments, and this suit is brought within ten years from the rendition of the judgments. The position of the city being that of trustee, her possession of the funds in question is not as owner, and prescription does not, as a general proposition, run in favor of the trustee as long as the trust relation continues. In equity the trustee should never be allowed to acquire trust funds by limitation. Daniell's Ch., 642; Oliver vs. Piatt, 3 How., 411.

The 11th assignment seeks to raise again the question of jurisdiction of the circuit court in the original action in which Mrs. Fisher obtained a judgment, and needs no further consideration.

The 12th assignment is that the court erred in holding the school taxes to be a trust fund in the hands of the city. The city was collecting the school taxes for the school board and therein acting as agent, and a trust naturally resulted.

160 The 13th assignment of error denies the right of the complainants to claim an accounting from the city of New Orleans. This objection goes to the right of the complainants to maintain this suit for an accounting which to us seems so plain that no argument is needed to sustain it.

The 14th and last assignment of error is as follows:

"It was error to order the whole fund ascertained by the master to be paid over to complainant and intervenors in this suit, because if said fund is a trust fund, it is held for the benefit of all interested in said fund, and the only part that should be paid to complainant and intervenors is their proportion of same; in other words, it was error for the court to ignore the rights of other certificate-holders not party to this suit, and who were not notified by publication, or cited herein. And to ascertain what proportion of the fund should go to the complainant and intervenors herein, a re-reference to the master is necessary."

To this, all that is necessary to answer is that the suit is one brought for the benefit of complainants and others similarly situated; numerous complainants who desire to participate in the expenses of suit have already intervened, and if there are others who desire to come in before the final distribution of any funds realized, the circuit court will be open to them.

John Fisher, natural tutor, etc., and others, complainants in the court below, assign as error on their cross-appeal, first: that a new trial having been refused after the term in which decree was rendered, the circuit court was without jurisdiction under equity rule No. 88 and other equity rules governing the practice of the court,

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to amend its decree; second: that, under the equity jurisprudence, as well as under the Louisiana law, complainant and intervenors were entitled to a decree carrying interest as was allowed by the original decree.

161 The record shows that after the decree entered at the November term and during that term a petition for rehearing was filed, submitted and taken under advisement; that pending decision of the matter the November term of the court was adjourned and the following April term commenced. As we understand the practice, the application for rehearing submitted and taken under advisement hindered the decree of the court as entered from becoming final, by the adjournment of the court, and it was competent for the judge at the following term of court to grant a full rehearing or otherwise modify his decree. Goddard vs. Ordway, 101 U. S. 745.

Whether interest should be allowed upon the amounts decreed against the city as directed in the original decree presents a more important question. The master found that the school taxes and interest on school taxes collected by the city of New Orleans for the years prior to 1879 and not paid over to the school board and now owing, amounted to the sum of $71,938.78, and of this sum the lower court gave originally a decree with 5% interest on $71,139.60, from January 24, 1881, and on $799.18 from May 11, 1896, until paid. The master's report is silent as to the dates on which the city of New Orleans had collected the several sums found due and owing by it to the school board, but the exhibits filed with the report show that all of the sum of $71,139.60 was collected by the city prior to January 24, 1881, and the sum of $799.18 prior to May 8, 1897. It is not disputed that the amounts collected by the city as interest on delinquent school taxes has been used and appropriated by the city in its own affairs. The general rule in equity is that a trustee who employs trust funds to his own advantage shall be charged interest. Perry on Trusts, sec. 468; Adams' Equity Mar., p. 54.

The Civil Code of Louisiana, section 3015, is as follows:

"The attorney is answerable for the interest of any sum
162 of money he has employed to his own use, from the time he has so employed it; and for that of any sum remaining in his hands from the day he becomes a defaulter by delaying to pay it over."

It thus appears that by general equity principles and by the Louisiana Civil Code, the City of New Orleans, as trustee, should be charged with interest. If the case is one showing that the City of New Orleans was a gross delinquent and an unfaithful trustee, equity would further require that compound interest should be allowed upon all sums collected and retained by it with six months' rests.

The interest claimed by the exception filed to the master's report and allowed in the original decree, and now claimed upon appeal, is five per cent., the legal rate of interest fixed in Louisiana on all debts from the time they become due, unless otherwise stipulated. The decree appealed from, as amended by the judge *ex propria*

motu, when the petition for rehearing was refused, allows no interest prior to the date of the decree. The amendment appears to have been suggested by the master's report to the effect that at the date thereof the city then owed the school board for taxes collected and for interest on taxes collected $71,938.78. An inspection of the report and the exhibit shows, however, that the moneys so found due have been for a long time in the hands of the city of New Orleans. That the master's report allowed no interest on these sums so held by the city was a specific ground of exception on the part of complainants to the master's report, and exceptors said: "That your exceptors are entitled to interest with an annual rest according to the rules and principles of equity and jurisprudence; but they will content themselves with simple interest, reserving their rights to a further account when found necessary."

Under all the circumstances, as shown by the record, we are of opinion that an allowance of five per cent. interest on the
163 amounts collected by the city prior to January 24, 1881, and held and employed in the city's affairs since that date, would be just and equitable, and that the decree, as originally rendered by the circuit court, was correct except as to interest on the sum of $799.18, which was only allowable from May 9, 1897, instead of from May 11, 1896.

The decree appealed from is amended so as to allow five per cent. interest on the sum of $71,131.60 from January 24, 1881, and on the sum of $799.18 from May 8, 1897, and as amended, the said decree is affirmed with costs against the City of New Orleans.

Clerk's Certificate.

United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 196 pages numbered from *a* to 195, inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court, in the case of the City of New Orleans, appellant, vs. John Fisher, tutor, etc., et al., appellees, No. 747, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit court of appeals, at the city of New Orleans, this 13th day of June, A. D. 1899.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

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UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honor-
164 able the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which The City of New Orleans is appellant and John Fisher, tutor, &c., et al., are appellees, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the circuit court of the United States for the eastern district of Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Supreme Court of the United States. October term, 1898. No. 747. The City of New Orleans vs. John Fisher, tutor, &c., et al. Writ of certiorari. Received June 1, 1899. J. M. McKee, cl'k.

United States Circuit Court of Appeals, Fifth Circuit.

In obedience to the command of the within writ and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, J. M. McKee, clerk of said court, do as a return to said writ transmit herewith to the honorable the Supreme
165 Court of the United States a true, full, and perfect transcript of the record, with all proceedings had, in the cause of The City of New Orleans, appellant, vs. John Fisher, &c., et al., appellees, as fully and completely as the same remains of record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, in the city of New Orleans, on this the 29th day of June, A. D. 1899.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No. 17,391. U. S. C. C. of appeals, 5th circuit. Term No. 281. The City of New Orleans, petitioner, vs. John Fisher, tutor, &c., et al. Writ of certiorari and return. Filed July 3, 1899.

166 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Motion and Affidavit for Time.

Supreme Court of the State of Louisiana.

No. 17022.

STATE ex Rel. FISHER, GASQUET, and als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On motion of Charles Louque and Fenner & Howe of counsel for the appellants—& Relators and on filing the affidavit of the Clerk of the lower court, showing that he will require further time to complete the transcript of appeal in this case; It is ordered by the court that the return day for filing said transcript in this court be extended to the third Monday of March A. D., 1908.

Entered and filed March 2, 1908.

(Signed) T. McHYMAN, *Clerk.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 82842.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

William B. Murphy, Deputy Clerk of the Civil District Court for the Parish of Orleans, being duly sworn, deposes and says that the transcript of appeal in the above entitled and numbered cause, returnable to the Supreme Court of the State of Louisiana on the First Monday of March 1908, has not been completed, for the reason that there *have* not been sufficient time to complete same, and that an additional delay until 3rd Monday of March 1908 from this date is necessary to enable him to complete the same.

(Signed) WM. B. MURPHY,
Deputy Clerk.

Sworn to and subscribed before me this 2nd day of March A. D., 1908.

(Signed) T. CONNELL,
Clerk of the Civil District Court
[SEAL.] *for the Parish of Orleans.*

OR COPY

167 (Endorsed:) No. 17,022. Supreme Court of Louisiana. State ex rel. Fisher, Gasquet et als. vs. Mayor and Council of New Orleans. Appeal from the Civil District Court for the Parish of Orleans. Affidavit for Extension of Return-day. Filed Mar. 2, 1908. (Signed) Paul E. Mortimer, Deputy Clerk.

Motion for Time.

(Extract from Minut-s.)

NEW ORLEANS, MONDAY, *March 2nd*, 1908.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices. Absent: Francis T. Nicholls, Associate Justice.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On motion of Charles Louque and Fenner, Howe, Spencer & Cocke, Esquires, of counsel for the appellants and relators, and on filing the affidavit of the Clerk of the lower court, showing that he will require further time to complete the transcript of appeal; It is ordered by the Court that the return day for filing said transcript in this court be extended to the 16th day of March, A. D. 1908.

Motion and Order to Use Records.

Supreme Court of Louisiana.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On motion of Charles Louque, Esq., attorney for relators, and on suggesting to the Court that the following records should be made a part of the present transcript of appeal: It is ordered by the Court that the following records: Fisher vs. School Board, No. 10,888,
168 Gasquet vs. School Board, No. 11,119, and Fisher vs. School Board, No. 12,105, of this Court, be made a part of the present transcript of appeal.

Continued by Preference.

(Extract from Minut-s.)

NEW ORLEANS, SATURDAY, *May 2nd*, 1908.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, and Alfred D. Land, Associate Justices. Absent: Olivier O. Provosty, Associate Justice.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

This case was ordered by the Court to be continued with preference.

Called, Argued, and Submitted.

(Extract from Minutes.)

NEW ORLEANS, SATURDAY, *May 30th*, 1908.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

This cause came on this day to be heard and was argued by counsel: Mr. Charles Louque opened for the plaintiffs and appellants; Mr. St. Clare Adams, Assistant City Attorney of the city of New Orleans, replied on behalf of the defendants and appellees, and Mr. Louque closed the argument. The Court then took said cause under advisement upon the briefs for the respective parties in interest and the papers now on file.

Final Judgment.

NEW ORLEANS, MONDAY, *June 8th*, 1908.

169 The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

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His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On Appeal from the Civil District Court for the Parish of Orleans.

For reasons stated, the judgment appealed from is affirmed.

Opinion of the Court.

170 MONDAY, *June 8th*, 1908.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

Appeal from the Civil District Court, Parish of Orleans.

BREAUX, *C. J.*:

Plaintiff proceeded against the defendant to compel it by mandamus, directed against the Mayor and Council of the City of New Orleans, to levy a special tax to pay judgments obtained by creditors against the Board of Directors of the city Schools.

The plaintiff sets out at length the names of the creditors and the judgments they obtained against the School Board, amounting, plaintiff claims, to over two hundred fifty thousand dollars; and alleges further that it will require a tax of one and a half mills on the assessed valuation of all the taxable property within the limits of the City of New Orleans.

Plaintiff in the petition for a mandamus alleged that a contract was entered into between the teachers who hold these claims and the School Board in the years 1874, 1875 and 1876, under the provisions of Act 36 of 1873, which gave authority to the Board to contract with these teachers for salaries payable out of a special tax to be levied by the City of New Orleans for the support of the public schools; that there was no maximum limit upon the tax which the Board was authorized to levy; "that", to copy from the petition, "the rate of taxation existing at the time of the contract formed a part of the contract and is read into it and continues to exist irrespective of subsequent legislation or constitutional enactment restricting the power of taxation."

Plaintiff, relator, invokes the Constitution of the United States as protecting him in his right and as doing away with the limit of taxation contained in Art. 232 of the Constitution of this State;
171 that the payments heretofore made by the City of New Orleans were not sufficient to pay the whole of relator's claim,

for the reason that the amount levied for the years 1873 to 1877 to pay the judgments and claims due—that a *fi. fa.* against the School Board regularly was issued and was returned not satisfied.

The defense on the part of the City is that plaintiff was without cause of action, which exception was overruled and on the merits of the case, the City's contention is that the Council, after having received the estimate for the year 1873 and the years subsequent, made provisions for the public schools in accordance with §3 of Act 36 of 1873.

That it specially complied with the statute which provided for a levy of a tax of not less than one fourth of one per cent on all taxable property in the City of New Orleans.

The respondent then took the position that the Statute pleaded by relator, i. e., statute of 1873 (36), did not confer upon relator or upon other persons dealing with the Board of School Directors any contract right to an unlimited special tax to be levied by the City of New Orleans for school purposes; but "respondent avers that the only special tax, and the only tax, which by §4 of the Act 36, of 1873, the City of New Orleans was bound to levy for school purposes for the years claimed by relator was one fourth of one per cent, and that the City of New Orleans did levy that tax.

That the City was not left entirely without discretion in the premises, and that it properly exercised that discretion without objection at the time or since before this suit was instituted.

The City narrates with particularity in the answer that the total amount collected up to the date of the special tax of one fourth of one per cent, levied by the City of New Orleans for the years 1874, 1875 and 1876, has been accounted for and paid over to the relators.

That relators must find the amount they claim under these
172 provisions and cannot now claim a special levy, not sanctioned by any statue before or since.

Respondent points to the statute which prohibited the Board of Directors from entering into contract greater than the amount of revenues provided for by statute "it being the intent hereof that parties contracting with said Board shall take heed that due revenue shall have been provided to satisfy all claims, otherwise they shall lose and forfeit the same."

The City of New Orleans cannot be compelled by mandamus to levy a special tax to pay relators by reason of the fact that §1 of Act 5 of the extra session of 1870 forbids any Court in the State from issuing writs of mandamus against any official of the City Government to compel the payment of any claim against the City, is another of defendant's grounds in opposition to relators' demand.

The defense further sets out that mandamus is not issuable to compel respondent to levy a greater tax for the years 1874, 1875 and 1876 than that which was levied.

Again, that over thirty years having intervened from the date of the debt — the petition was filed for the writ of mandamus is in effect an abandonment of all right to the writ, if even relators had such a right.

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In reference to the relators' contention that the claims pleaded by them have at their instance merged in a judgment of the United States Federal Court: Respondent's answer is that relators are not entitled to a writ of mandamus by State Courts to aid the Federal Courts in execution of one of their judgments.

Respondent in the defense, returning to the power to levy a tax, avers that for the years 1874, 1875 and 1876 it exhausted all of its authority of taxation.

We will here state as part of the facts of the case that there was a contract of employment entered into between the school teachers and other public school employés and the School Board; that
173 for the services rendered by them the School Board issued certificates.

The City does not question the fact that judgments were obtained upon these certificates; that the City was a party to the suits, but the contention on its part is that the Court rendered judgment in its favor in these suits.

The insufficiency of the amount levied by the City Council to pay this indebtedness is the gravamen of relator's complaint. The predicate of their complaint is that under §4 of the Act of '73, which provided that the School Board should make an estimate, for the year 1873 and the years following, of the amount which the Board deemed necessary for the support of the public schools, was binding upon the City Council and that the City should have levied a tax equal to this estimate furnished to the Council at the time.

The act in question provided further that the City was to levy a tax of not less than two and a half mills on all property subject to taxation in the city.

It is in place to state here, in order to have all the facts before the Court on this point, the amounts of taxes levied by the City for the different years and the amounts furnished by the State:

The year.	Estimate of the school board.	Tax levied by the city.	State's portion.	Printed Record, page.
1874..	456,100	327,386.14	75,000.00	55
1875..	486,500	298,221.26	48,825.71	56
1876..	408,820	297,613.78	43,784.27	58
1877..	408,600	219,339.78	70,314.50	60
1877..	303,688	222,294.49	97,115.48	62
	2,063,708	1,364,855.45	335,039.96	
	1,699,895.41	335,039.96		
	363,812.59	1,699,895.41		

The contention of relators is that the City should have levied the three hundred sixty-three thousand eight hundred twelve and 59/100 dollars instead of two and a half mills that was levied.

174 Having stated all the facts needful in deciding the case, we return to the first proposition before us for decision in the order of the issues as before stated.

The first proposition of relator is that mandamus is the proper remedy.

In answer to this contention, respondent urged in the answer that under Act 5 of 1870 E. S. plaintiff is not entitled to the action instituted.

Recently a somewhat similar point was raised. It was decided in Ex rel. Douglas vs. Kennedy, Comptroller, No. 16,992, not yet reported. We will here state that the law construed in the decision just cited was enacted before the date of the alleged contract in the case now before us for decision. In the Douglas case just cited, the relator had earned the amount which he sought to collect. He brought his suit in time. The Court held that the Act before referred to was imperative in terms and that he, Douglas, would have to resort to other steps than by mandamus to recover the amount claimed.

We only refer in passing to the decision above cited.

There are other points of the case if anything more decisive and for that reason we take them up for decision, and rest our conclusion upon the latter as sustained by authority hereafter cited.

A very great lapse of time has every appearance of presenting a complete bar to the mandamus, in the case before us, for decision. The right to bring such an action is necessarily weakened and lost after a number of years have passed. A creditor, having remained inactive and permitted a number of years to elapse, cannot demand a levy of taxes and by a writ of mandamus obtain an order to compel its levy.

In the case here property has changed hands. Other owners would have to pay the amount. They acquired this property free from all claims. To turn back the hand of time and compel present owners to pay a tax of a remote past has every appearance of the inequitable and unjust. There should be a limit: "each year," said the Court in the first cited case infra, "the property
175 ought to bear its annual burden, but if a ruinous accumulation of unlevied taxes can be passed upon it at the mere caprice of a creditor who was silent when he should have spoken what safety can a man have in his possessions?"

Martin vs. Kirk et al., Federal Reporter, Vol. 72, 290.
See also, True vs. Melin, 43 N. H. 503.
Savan-ah vs. Georgia, 4 Ga.

In the respects that the City Council of New Orleans failed to do its duty in the early seventies (if it did fail) the present Council and those whom it represents is not to be made to answer therefor in the defense of a proceeding by mandamus.

We for a moment will take up the next ground of defense: that is that the State cannot be made to aid the Federal Courts in execution of their judgments. If that was all, respondent would have very little to stand on. The point does not commend itself. If the amounts were due and there was ground for mandamus, it strikes us under the circumstances of this case mandamus would lie.

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We will not stop to discuss the point further as it is not pertinent to our conclusion.

That the City Council did not adopt the estimate of the School Board in 1873 and other years following in making up its budgets, is the next ground presented by relators. Here relator's contention is that there was no limit placed on the City Council by Statute; it could levy a tax for schools for any amount.

That may well have been, at the same time it did not deprive the City from all discretion as to the amount to be set aside for schools. In following the statutes, we notice that there was some limit, if not on the City Council in regard to schools there was a limit on the Board of Directors of the schools, for the latter were forbidden from entering "into contracts greater than the amount of the revenues provided for according to this act or other school laws existing, it being the intent hereof that parties contracting with said Board shall take heed that due revenues shall have been provided to satisfy the claims, otherwise they shall lose and for-
176 feit the same and no action or execution shall be allowed in aid thereof, and that the Board shall not exceed its powers in incurring debts."

Act 36 of 1873.

The revenues were provided by the City Council not by the School Board. It was incumbent upon it (the said Board) after the budget of the City Council had been adopted not to exceed the amount allowed by the budget. This is the interpretation we place on the last quotation above. It was further incumbent upon the Board to heed the extent of the revenues provided. Not only the Board was to take heed of the amount of the revenues, but according to the terms of the act, from which we have quoted, the creditors themselves were warned of the result if the expenses were in excess of the revenues. If it exceeded the creditors themselves were to lose their claims. See the statute cited above.

But above all whatever right there may have been should have been urged in due time.

It does not appear that the School Board ever objected or any of the creditors at the time to the amount levied.

It must be borne in mind that the City was not indebted for this amount. This has long since been decided.

Labat vs. City, 38 An. 283.

The Council must have been vested with some discretion at the time. The estimates to be furnished by the School Board provided for in the act were in their nature advisory and not mandatory. It surely was not the intention to divest the Council of its authority and to invest the School Board with peremptory authority to compel the City to set aside a larger amount than the City Council deemed it proper (provided always that the ¼ of 1 per cent were levied). We are decidedly of the opinion that the City is not bound to make good an omission, negligence or dereliction (if there were such on the part of the Council of many years ago). Debts and liabilities

should always be discharged if at all possible but by those who are liable therefor.

Where the debts were not incurred by the authority from which the judgment is demanded, where the taxes levied to the ex-
177 tent possible have been collected or accounted for, it would be difficult to conclude that another tax at this date should be levied.

We are not of opinion that a writ of mandamus should issue.

For reasons stated, the judgment appealed from is affirmed.

Petition for Rehearing.

Supreme Court of Louisiana.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

Your Honors have decided:

I.

That by reason of Act 5 of 1870, E. S., relators are debarred from applying for a mandamus.

The answer of relators to this proposition is two fold:

1st. The act applies to a proceeding to obtain money from the Treasury of the City of New Orleans for a debt due by the City of New Orleans. We are not in these proceedings seeking to regulate the internal affairs of the city. The proceedings are directed against the City of New Orleans as a corporation. The disbursing officers of the city are no parties here.

2d. If, however, the Act of 1870, applied to this cause, it is null and void, being in direct contravention to the Constitution of the United States, because it takes away all remedies from relators and deprives them of their property without due process of law.

178 II.

Your Honors decide that a "very great lapse of time is a complete bar to a mandamus."

In explaining how you arrive at this conclusion, your Honors state that it would be unjust to make the property owners at the present time pay a tax which should have been paid by previous owners and that the present City Council of New Orleans is not bound to make good the dereliction of duty of the previous council.

We infer from these reasons that the corporation of the City of New Orleans is not the same to-day that it was in 1872. In other words, the Charter of 1896 has repealed the previous charters and stands as a bar to the levy of an additional tax. That the rights of relators are governed by the present charter, although that charter impairs the obligations of their contract.

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We answer this proposition as follows:

1st. The obligation to levy the school tax in 1872 was by law imposed on the City of New Orleans, which to-day is the same City of New Orleans that it was in 1872.

There existed no limit to the tax in 1872 and none can be placed to-day, without impairing the obligations of relators' contracts.

2d. Your decision deprives relators of their remedy, during the time when their judgments against the School Board are in full force and effect. By so deciding your Honors virtually declare that the right of a judgment creditor to issue his writ fieri facias may be lost by the lapse of time, although his judgment remains in full force and effect. A writ of mandamus to levy a tax to pay a judgment, is nothing more than a mode of execution; a writ of fi. fa. in another form.

3d. In deciding that our remedy was lost by the lapse of time, relators would have supposed that your Honors recognized that at some previous period of time, relators had some right to this remedy. Not so, however. Your Honors have decided that we never did, at any time, have a claim; that the School Board exceeded its revenues and that we are barred out.

The question recurs to us: If a man has no claim against me, how long does it take to bar his remedy?

III.

Your Honors have decided that the School Board was bound by the budget adopted by the City of New Orleans, and that they could not go beyond the amount allotted to them.

Your Honors are in error as to any amount placed in any budget. The Record is silent as to any budget. The law requires the City Council to levy a tax for the support of the public school, and the proceeds of the tax go in the hands of the City Treasurer, who collects the same and also acts as the treasurer of the School Board. He pays the amount so received by him under the orders of the School Board.

179 IV.

Your Honors say that "Relators' contention is that there was no limit placed on the City Council by statute; it could levy a tax for schools for any amount. That may well have been, at the same time it did not deprive the city from all discretion as to the amount to be set aside for schools." Then you say that the limit was on the School Board and that parties contracting with it were bound to take due heed that the revenues have been provided to satisfy the claims, otherwise they shall lose and forfeit the same and no action or execution shall be allowed in aid thereof. In construing the contract which relators present to the Court for consideration and the law under which the contract is entered all the clauses of the law must be taken into consideration.

It was never meant that the School Board should be authorized to hire to school teachers at a yearly salary to be paid according to

the calendar months, and that if the funds should be exhausted, although the School Board remained within its estimate or budget, that the parties doing the work, should lose their claim and should have no remedy. But if that be as your Honors state then Section 10 of Act 36 of 1873 deprives relators of their property without due process of law.

The true construction to be placed on the Act of 1873, No. 36, is that the School Board should not exceed its estimates. That the City Council should levy a tax to pay the estimates. Relators showed that the School Board were within their estimates by $158,547. This was done.

If it were true that the creditors had no claim at all because their revenues were exceeded by the School Board, the Legislature of 1880, p. 48, acting under and by virtue of the Constitution of 1879, validated all these claims, and acting under this law the City of New Orleans retired a great many of these school certificates under Ordinance 6438, A. S., amounting to $69,991.99. This then was a ratification by the city of the action of the School Board, which estops the city from setting up the nullity of the agreements and contracts of relators with the School Board.

V.

But if it be true that the city could not be compelled by mandamus to levy a greater tax than ¼ of 1 per cent, then relators are entitled to the full collection of that amount and the city must make up the deficiency which we have shown.

Relators, therefore, pray that a rehearing be granted herein.

Respectfully submitted,

CHS. LOUQUE, *Of Counsel.*

New Orleans, June 15, 1908.

(Endorsed:) No. 17,022. Supreme Court of Louisiana. State ex rel Fisher, Gasquet et als. vs. Mayor & Council of New Orleans. Petition for Rehearing. Filed June 15th, 1908. (Signed) Paul E. Mortimer, Deputy Clerk.

Rehearing Refused.

NEW ORLEANS, MONDAY, *June 22nd*, 1908.

The Court was duly opened, pursuant to adjournment.
180 Present their Honors:—Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 17022.

STATE ex Rel. FISHER, GASQUET, et als.
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

By the Court:

It is ordered that the rehearing applied for in this case be refused.

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Petition for Writ of Error.

To the Honorable the Chief Justice of the Supreme Court of Louisiana:

The Petition of John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and Heirs of Francis James Gasquet; and the Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomes; Georgiana T. Fredrichs, Lizzie G. Wheelright; Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes, Tutor of Marguerite; Marie Antoinette, and Jeanne Marie Sintes; Widow Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Guthans; Dr. St. M. Fortier and Wid. Eugenia Quinlan; Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; all of whom reside in New Orleans; D. A. Chaffraix, a citizen of the Franch Republic; Miss Edith Faurie and T. P. Wharton, citizens of the State of New York; and Miss Fannie DeLacy, a citizen of the State of Montana, respectfully represents:

That in the matter of the State of Louisiana Ex. rel John Fisher, Gasquet et als., wherein your Petitioners were Relators, claiming against the Mayor and Council of the City of New Orleans,
181 the levy of a special tax to pay the balance due Relators, on their contract entered into with the School Board of the City Schools of New Orleans, No. 17022 of the docket of this Honorable Court, and wherein Relators claimed that their contract rights were protected from impairment by the constitution of the United States;

A manifest error has happened to the great damage of your Petitioners, by denying that Petitioners had any valid contract with the School Board and *denying that Petitioners had any valid contract with the School Board and* denying that Petitioners were entitled to any protection by the Constitution of the United States as more fully appears by the judgment of the Supreme Court and by the assignment of errors, both hereto annexed and made part hereof;

That your Petitioners desire to obtain a review of said judgment by the Supreme Court of the United States;

Wherefore Petitioners pray that a writ of error be granted by your Honor, to Petitioners from the judgment of the Supreme Court of Louisiana to the Supreme Court of the United States sitting at Washington, District of Columbia, returnable according to law, said writ to act as a Supersedeas on Petitioners giving bond conditioned as the law directs and Petitioners pray that the Mayor and City Council be cited hereto and they further pray for general relief.

(Signed) CHAS. LOUQUE,
Of Counsel.

Order Allowing Writ of Error.

Allowed (without supersedeas) by
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court
of the State of Louisiana.

(Endorsed:) No. 17,022. Supreme Court of Louisiana. State ex rel. Fisher, Gasquet, et als. vs. Mayor and Council of New Orleans. Petition for Writ of Error. Filed July 2, 1908. (Signed) T. McC. Hyman, Clerk.

182 *Assignment of Errors.*

STATE ex Rel. FISHER, GASQUET, et als.
vs.
THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

To the Honorable the Supreme Court of the United States:

Into Court come: John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and the Heirs of Francis James Gasquet, the Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gauthreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Guthans, Dr. St. M. Fortier, Wid. Eugenia Quinlan, Executors of F. J. Quinlan Universal Legatee of Mary Quinlan; D. A. Chaffraix; Miss Edith Faurie T. P. Wharton and Miss Fannie De Lacy;

Who say that in the record and proceedings whereof your Petitioners are Plaintiffs and Relators and the Mayor and Council of the City of New Orleans are Defendants, there is manifest error as hereinafter more especially stated to the great damage of your Petitioners and Petitioners assign the following errors into which the said Supreme Court of Louisiana fell in deciding that Relators did not have a valid contract with the Board of School Directors of the City of New Orleans by the reason of the limitation placed on said School Board, by the Council of New Orleans, whereas, in truth the contract which Petitioners had was a valid contract, made payable out of the special school tax levied by the City of New Orleans to pay said contract and was protected from impairment by the Constitution of the United States.

183 1. That the estimates furnished by the School Board to the City in 1873-1874, 1875-1876-1877 and 1878 were the proper guide for the expenditures to be incurred by the School

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Board as well as the amount of tax to be levied by the City of New Orleans;

2nd. That the expenditures made by the School Board did not reach the limit of the estimates by $158,547.20;

3rd. That the tax levied by the City of New Orleans did not reach the estimates of the School Board by $363,812.59 which amount of deficiency the City was bound to levy;

4th. That the Legislature of the State of Louisiana did not and never did intend to deprive your Petitioners of their property and Section 10 of the Act of 1873 No. 36 has no application *of* the claims of Petitioners, but if the act could be so construed, then Section 10 is violative of the Constitution of the United States by depriving Petitioners of their property without due process of law;

5th. That the Act of 1870 No. 5 of the Extra Session, does not apply to this case; but if said act can be construed to apply to this cause, then it deprives Petitioners of all remedy and takes away their property without due process of law;

6th. That when your Petitioners obtained their judgment against the Board of Directors of the City of New Orleans, all questions as to the validity of their contract were set at rest and as long as the judgment remain in force Petitioners are entitled to all the remedies provided by law ior the collection of said judgments; It is admitted by the Respondents and not denied that said judgment- are now in full force;

7th. That the rate of taxation existing at the time of the contract continues to exist until tne contract has been satisfied. The repeal of the Act of 1873, and the limitation of taxation imposed by the Constitution of 1898 and by the City Charter of 1896, can have no application to the contracts of Petitioners without impairing the obligation of their contract;

184 8th. That the estimates furnished by the School Board to the City of New Orleans, were the guide by which the expenditures of the School Board were controlled and the revenues of the Board were to be provided, otherwise all the symmetry of the system provided for by the act, was destroyed;

9th. A writ of mandamus to enforce the collection of a judgment is a mode of execution and as long as the judgment remains in full force and effect. Plaintiff is entitled to his execution.

The levy of a tax is the sole means by which judgment creditors of corporations which own no property, can be collected, as is shown by the return on the writ of execution issued herein;

10. It was impossible for Petitioners to have asked for the levy of the tax sooner, for the reason that the amount of deficiency had to be ascertained so as to fix the rate required for the levy of the tax necessary to pay your Petitioners.

That the amount of deficiency was only fixed after the decision rendered by the Supreme Court of the United States in the case of Fisher vs. City of New Orleans, decided in 1901. No. 281 of the Oct. Term 1899.

The lower Court allowed complainants Seventy One thousand Dollars with five per cent interest from the date of judgment; on

appeal, the Circuit Court of Appeals for the Fifth Circuit, allowed Petitioners Twenty Years of interest at five per cent which amount if collected would have greatly reduced the deficit; The Supreme Court allowed five per cent from judical demand. It was only after the rendition of this judgment and the failure to collect any further back taxes that the deficiency, and the rate of taxation necessary could be ascertained.

These dates as fixed by the Record are so recent that Petitioners cannot be charged with laches;

11th. That the Corporation of the City of New Orleans is bound to-day in the same manner and to the same extent it was in 1873.

185 12th. Petitioners are entitled to have the City make good the deficit of the ¼ of one per cent School Tax levied by the City of New Orleans in 1874-1875-1876-1877 and 1878, still uncollected and uncollectable, the sum of $150,451.89 and the Court erred in refusing to recognize the validity of Petitioners' contract to this extent, notwithstanding the change of the City Charter and the limitation of taxation fixed by subsequent State Statutes.

13th. That the validity of all these contracts was recognized by the State of Louisiana in the acts of 1880 No. 49 page 48, passed in conformity to the requirements of the Constitution of 1879, and by the Act of 1894 No. 136.

14th. That the validity of said contracts was recognized by the City of New Orleans in ordinance No. 6438 Administration Series passed in accordance with act No. 49 of 1880.

15th. That the City of New Orleans is estopped from claiming the nullity of Petitioners' contracts having retired $69,991.99 of said certificates at the face thereof without claiming that the funds arising from the School Tax should have been distributed pro rata, by reason of any deficiency in the revenues of the School Board.

Wherefore petitioners pray that the judgment of the Supreme Court of Louisiana be reversed and that the mandamus prayed for, be made peremptory and petitioners pray for general relief &c.

(Signed) CHAS. LOUQUE, *Att'y.*

(Endorsed:) No. 17,022. Supreme Court of Louisiana. State of Louisiana ex rel. Fisher, Gasquet et als. vs. Mayor and Council of New Orleans. Assignment of Errors. Filed July 2, 1908. (Signed) T. McC. Hyman, Clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

186 The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said

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State in which a decision could be had in the said suit between John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and the Heirs of Francis James Gasquet, the Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Guthans, Dr. St. M. Fortier, Wid. Eugenia Quinlan Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; D. A. Chaffraix; Miss Edith Faurie, T. P. Wharton and Miss Fannie Le Lacy and The Mayor and Council of the City of New Orleans No. 17,022 of your Docket, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said above named plaintiffs in error, to-wit:

187 John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and Heirs of Francis James Gasquet; the Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomez, Georgiana T. Fredrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes Tutor of Marguerite, Marie Antoniette and Jeanne Marie Sintes; Wid. Amelie Gauthreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Guthans, Dr. St. M. Fortier, Wid. Eugenia Quinlan, Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; D. A. Chaffraix; Miss Edith Faurie; T. P. Wharton, and Miss Fannie De Lacy, as by the*m* complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause fur-

ther to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 2 day of July, in the year of our Lord one thousand nine hundred and eight.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

188 (Endorsed:) No. 17,022. Supreme Court of Louisiana. State of Louisiana *ex rel.* Fisher, Gasquet *et als. versus* (Writ of Error) Mayor and Council of New Orleans. Copy of Writ of Error lodged in the Clerk's Office of the Supreme Court of the States of Louisiana, in pursuance to the statute in such cases made and provided, this Second day of July, one thousand nine hundred and eight. (Signed) Charles Louque, Attorney for Plaintiff in Error. Filed July 2, 1908. (Signed) T. McC. Hyman, Clerk.

189 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and the Heirs of Francis James Gasquet, the Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux, Gabriel Sintes Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer, John A. Guthans, Dr. St. M. Fortier, Wid. Eugenia Quinlan Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; D. A. Chaffraix; Miss Edith Faurie, T. P. Wharton and Miss Fannie DeLacy, and The Mayor and Council of the City of New Orleans No. 17022 of your Docket wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in

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favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty,
190 or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said above named plaintiffs in Error to-wit:

John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and Heirs of Francis James Gasquet; the Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Guthans, Dr. St. M. Fortier, Wid. Eugenia Quinlan, Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; D. A. Chaffraix; Miss Edith Faurie; T. P. Wharton, and Miss Fannie DeLacy as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 2 day of July, in the year of our Lord one thousand nine hundred and eight.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of Louisiana. No. 17,022. State of Louisiana *ex rel.* Fisher, Gasquet, *et als. versus* Mayor and Council of New Orleans. Writ of Error. Filed July 2, 1908. T. McC. Hyman, Clerk.

191 *Bond for Writ of Error.*

STATE OF LOUISIANA,
City of New Orleans:

Be it known: That on the Second Day of July, 1908, we John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher; Mrs. F. J. Gasquet, Executrix and Heirs of Francis James Gasquet; Heirs of Jos. Hernandez; U. Koen & Co. transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright; Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes, Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Guthans, Dr. St. M. Fortier and Wid. Eugenia Quinlan, Executors of F. J. Quinlan; Universal Legatee of Mary Quinlan; D. A. Chaffraix; Miss Edith Faurie; T. P. Wharton and Miss Fannie De Lacy *as principals,* and James A. Brennan, of the Parish of Orleans, *as surety* are held and firmly bound unto the Mayor and City Council of the City of New Orleans, in the Sum of Five Hundred Dollars to be paid to the said Mayor and Council of New Orleans and successors in office; to which payment well and truly to be made we bind ourselves and each of us jointly and severally and our heirs, executors and administrators firmly by these presents.

Whereas the above named principals have prosecuted a writ of error to the Supreme Court of the United States from a judgment rendered by the Supreme Court of Louisiana in the matter of the State ex rel. Fisher, Gasquet et als. above named principals vs. the Mayor and Council of New Orleans, No. 17,022 of the Docket of said Court and citation to appear in the Supreme Court in 30 days, to reverse the said judgment rendered in the above entitled action which became final June 22nd, 1908;

192 Now, therefore the condition of the above obligation is such that if the above named principals shall prosecute their said writ of error to effect, and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Thus done and signed on the day and date above mentioned.

In presence of
(Signed) JOHN FISHER,
And Principals Above Named,
(Signed) Per CHAS. LOUQUE.
(Signed) JAS. B. BRENNAN.

James A. Brennan being duly sworn says that he resides in the Parish of Orleans and that all his debts and liabilities being paid he is fully worth over and above all his debts and property exempt from taxation the sum of five hundred dollars, and that he is the surety on the above bond.

(Signed) JAS. A. BRENNAN.

R COPY

Sworn to and subscribed before me this 3rd day of July, 1908.
[SEAL.] (Signed) T. McC. HYMAN,
Clerk Supreme Court of Louisiana.

The above bond is accepted and approved by
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

New Orleans, La., July 3rd, 1908.

(Endorsed:) No. 17,022. Supreme Court of Louisiana. State *ex rel.* Fisher, Gasquet *et als.* vs. Mayor and Council of New Orleans. (Bond for writ of Error.) Filed July 3, 1908. (Signed) T. McC. Hyman, Clerk.

193 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing One hundred and ninety-two pages, contain a full true and complete transcript of the proceedings had in the Civil District Court for the Parish of Orleans in a certain suit wherein State of Louisiana *ex rel.* Fisher, Gasquet and Others were plaintiffs and Mayor and Council of New Orleans were defendants, as per memorandum, of counsel, and also of all the proceedings had in this Honorable Court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 17,022.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at the City of New Orleans, this 27th day of July, *Anno Domini* 1908, and in the One hundred and thirty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

194 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman, is Clerk of the Supreme Court; that the signature of said Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him the said Clerk; that said certificate is in due form of law; and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the City of New Orleans, this 27th day of July, *Anno Domini*, 1908.

[Seal Supreme Court of the State of Louisana.]

JOS. A. BREAUX,
Chief Justice.

195 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, through Martin Behrman, Mayor, and the Council of the City of New Orleans, through Jas. McRaken, President of said Council, and Martin Behrman, Mayor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher, Mrs. F. J. Gasquet, Executrix and Heirs of Francis James Gasquet; Heirs of Jos. Hernandez; U. Koen & Co., transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright; Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes, Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellamn and Estate Adele Beer; John A. Gauthans, Dr. St. M. Fortier and Wid. Eugenia Quinlan, Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; D. A. Chaffrix; Miss Edith Faurie; T. P. Wharton and Miss Fannie De Lacy are Plaintiffs and the Mayor and Council of the City of New Orleans are Defendants No. 17022 of the Supreme Court of La., to show cause, if any there be, why the judgment rendered against the said Plaintiffs and Relators, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand nine hundred and eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 17022. State ex rel. Fisher, Gasquet & als., vs. Mayor & Council of New Orleans. Citation.

R COPY

Sheriff's Return.

Received Friday, Jul- 10, 1908, and on the 23rd day of July, 1908, I served a copy of the within citation on The City of New Orleans, defendant herein, by personal service on Mr. Martin Behrman, its Mayor.
Returned same.

C. M. GOSS,
Deputy Sheriff of Orleans Parish.

Christian M. Goss, Deputy Civil Sheriff for the Parish of Orleans, State of Louisiana, being sworn, deposeth and says that he made a personal service of a copy of the within Citation on the Honorable Martin Behrman, Mayor of the City of New Orleans.

C. M. GOSS,
Deputy Sheriff.

Sworn to & subscribed before me, at the City of New Orleans, this 25th day of July, A. D. 1908.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk Supreme Court, La.

Filed July 25, 1908.

T. McC. HYMAN, *Clerk.*

196 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, through Martin Behrman, Mayor, and the Council of the City of New Orleans, through Jas. McRaken, President of said Council, and Martin Behrman, Mayor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein John B. Fisher, James M. Fisher, Wm. G. Fisher and Robert B. Fisher, Mrs. F. J. Gasquet, Executrix, and Heirs of Francis James Gasquet; Heirs of Jos. Hernandez; U. Koen & Co., transferees of Jose Venta; Jean Pomez; Georgiana T. Fredrichs, Lizzie G. Wheelright; Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes, Tutor of Marguerite, Marie Antoinette, and Jeanne Marie Sintes; Wid. Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; Heirs of M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hille; A. E. Brewer; S. Easton; Anna Fellamn and Estate Adele Beer; John A. Gauthans, Dr. St. M. Fortier and Wid. Eugenia Quinlan Executors of F. J. Quinlan, Universal Legatee of Mary Quinlan; D. A. Chaffrix; Miss Edith Faurie; T. P.

Wharton and Miss Fannie De Lacy, are Plaintiffs, and the Mayor and Council of the City of New Orleans are Defendants No. 17022 of the Supreme Court of La., to show cause, if any there be, why the judgment rendered against the said Plaintiffs and Relators, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2d day of July, in the year of our Lord one thousand nine hundred and eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 17022. State ex rel. Fisher, Gasquet & als., vs. Mayor & Council of New Orleans. Citation.

Sheriff's Return.

Received Friday, Jul- 10, 1908, and on the 23rd day of July, 1908, I served a copy of the within citation on The Council of the City of New Orleans, defendant herein, by personal service, on James McRacken, its president.

Returned same day.

C. M. GOSS,
Deputy Sheriff.

Christian M. Goss, Deputy Civil Sheriff for the Parish of Orleans, State of Louisiana, being sworn, deposeth and says that he made a personal service of a copy of the within Citation on the James McRacken, President of the City Council of the City of New Orleans.

C. M. GOSS,
Deputy Sheriff.

Sworn to and subscribed before me, at the City of New Orleans, this 25th day of July, A. D. 1908.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk Supreme Court, La.

Filed July 25, 1908.

T. McC. HYMAN, *Clerk.*

Endorsed on cover: File No. 21,281. Louisiana supreme court. Term No. 217. John B. Fisher, James M. Fisher, William G. Fisher et al., plaintiffs in error, vs. The Mayor and Council of the City of New Orleans. Filed July 31, 1908. File No. 21,281.

COPY

Office Supreme Court, U. S.
FILED.
NOV 9 1910
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 43.

JOHN B. FISHER ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

LOUISIANA STATUTES.

Appendix to Brief for Plaintiffs in Error.

CHARLES LOUQUE,
Counsel for Plaintiff in Error.

(21,281)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 43.

JOHN B. FISHER ET AL., PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

LOUISIANA STATUTES.

Appendix to Brief for Plaintiffs in Error.

No. 123.] LOUISIANA. 1874.

For the better organization and government of the public schools of the city of New Orleans; to set apart the school funds for each year; to provide that the directors shall be directors from the city at large; to increase and secure the standard of qualification for teachers, and regulate their appointment; to enforce the local school tax and the duties of the City Council in reference thereto; to provide for an assistant division superintendent; to require the directors to visit the schools, and to establish a normal school.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly*

convened, That as soon as practicable after the passage of this act the Auditor of Public Accounts shall report to the Superintendent of Education how much of the two mills tax for the support of public schools has been collected upon each separate annual assessment since the institution of said tax, and how much remains delinquent or uncollected; also, how much of the same has been apportioned according to law, how much, if any, remains in the treasury, and thereafter, with every apportionment of school moneys among the parishes, the Auditor of Public Accounts shall report in like manner to the Superintendent of Public Education what proportion or part of the sum distributed has been collected for each respective year, and the Superintendent of Public Education shall make communication thereof to the board of school directors for the city of New Orleans and the Administrator of Finance of said city, which latter officer shall keep separately for each year the city tax for public schools, together with the State school tax apportioned for and raised upon the State tax made first due and collectible the said year.

SEC. 2. *Be it further enacted, etc.*, That the revenues thus received and set apart for each year shall be devoted exclusively to the debts of said year, excepting any surplus remaining, which shall be covered into the treasury for the expenses of the succeeding year, and so on.

SEC. 3. *Be it further enacted, etc.*, That in all future appointments to fill vacancies upon the board of school directors for the city of New Orleans as now constituted, the State Board of Education shall appoint from the city at large, and from and after the passage of this act the members of the board of school directors for the city shall be deemed directors from the city at large, it being the intent and object of this act to repeal the present district and ward system. The board shall not be required to give security on appeal or other bonds, and shall not be executed against for the payment of money by mandamus, except in cases as at present permitted by law.

SEC. 4. *Be it further enacted, etc.*, That the competitive system established by section nine of act No. 36 of 1873 is hereby continued in force, except so far as modified herein. Special examinations shall be held for professors or teachers of the high and normal schools. Teachers of district schools shall be of three grades, and shall be so classified in fixing the results of their examination. Those of the first grade shall be entitled to election to any position up to and including that of principal, those of second grade to any position up to and including that of first assistant, and those of the third grade can only be appointed to positions inferior to that of a first assistant. Teachers at present in the schools, or who have taught three years previously in any grade, shall not be required to pass examination for such grade, except to obtain certificates from the State or division superintendent. But none shall be newly elected or promoted to be principals or first assistants unless they shall have passed a competitive examination and shall have received a certificate of qualification from the committee on teachers or the State Superintendent, as provided by section nine of act No. 36 of 1873, of the twenty highest on the record of the committee on teachers, and the Administrator of Finance shall not pay, or, if he does, shall be liable *in solido* with the directors appointing any teacher in violation of this section for the full amount of the salary paid, and the directors making or participating in such appointments shall be liable to the teacher for salary, and not the school fund or board in its corporate capacity. For teachers of third grade the application of the competitive system shall be optional with the school board, provided the candidates be fully qualified, and have the certificates by law from State or division superintendent, or the committee on teachers, or have served three years as aforesaid.

SEC. 5. *Be it further enacted, etc.*, That teachers shall only be elected or appointed by the board at a stated or regular meeting, excepting temporary appointments, the right to

make which may be delegated to the committee on teachers. The appointees to serve only till next regular meeting, and the board shall not otherwise delegate or subdivide its power of appointment; *provided,* The committee on teachers may suspend for gross cause till such regular meeting only, when the board may further suspend or remove, otherwise the teachers shall be reinstated. No teacher shall be removed except by the board in regular meeting after such gross charges shall have been proved. Payment during suspension shall be optional with the board, whether by vacating and dispensing with the position or supersedure or removal. It shall be sufficient that the board, upon action in regular meeting, notify the former incumbent that his or her services are no longer required, to discontinue the salary.

SEC. 6. *Be it further enacted, etc.,* That there shall be appointed by the State Superintendent of Education an assistant division superintendent at a salary of two thousand five hundred dollars per annum, payable in monthly parts out of the current school fund. He shall assist the division superintendent in the general discharge of his duties, and under his directions visit the various schools and aid in the public examinations, and that the office of secretary of the division superintendent of the sixth division is hereby abolished.

SEC. 7. *Be it further enacted, etc.,* That the division superintendent shall be *ex officio* a member of all the committees for the purpose of consultation and information; he shall call them together, and shall join in their proceedings, reports, or otherwise at his option.

SEC. 8. *Be it further enacted, etc.,* That the board shall appoint permanent or annual high school committees and monthly visiting committees for the district schools, to be rotated in such manner that each school district shall be visited at least once a month, and any director neglecting his assigned duty of visiting or absenting himself from the board for two months in succession, without leave of absence, shall

forfeit his place in the board, and the State board shall fill the same for the unexpired term. No assignment as visiting director or committee to any district shall constitute him or them as directors of such district, except for the purpose of visiting and reporting upon the same, it being the intention of this act that each member of the board shall be a director of the public schools of the city of New Orleans at large, and alternated upon visiting committees in such manner as to visit the schools in all parts of the city during his term of office.

SEC. 9. *Be it further enacted, etc.*, That the tax required to be levied by section four of act No. 36 of 1873 shall be levied as soon as practicable after the expiration of the month of October or the making of the estimate of the board of directors, but shall not be invalidated if delayed by any cause. The levy up to one-fourth of one per cent shall in no case require an election or approval by the qualified electors, nor shall an increased levy require such election or approval unless thereby the aggregate or limit of city taxation be exceeded. Failure of the mayor or any administrator to comply with said section four of act No. 36 of 1873 before the close of the year in which the estimate is made, shall render his office *ipso facto* vacant, and the Governor shall fill the same by appointment, and the council shall then proceed to act. Ordinance No. 2418, administration series, is hereby ratified and confirmed, and ordered to be carried out.

SEC. 10. *Be it further enacted, etc.*, That the board of directors of the public schools for the city of New Orleans be empowered to open and conduct a normal school for the city of New Orleans, and the committee on teachers shall be *ex officio* the committee on said school, and graduates thereof, after two years' attendance, shall be noted as to proficiency, as required in section nine of act No. 36 of 1873, amended by this act, and graded, and receive certificates accordingly.

as candidates for teachers under the provisions of the present act.

SEC. 11. *Be it further enacted, etc.,* That the certificates of qualification issued by the State Superintendent of Public Education after the passage of this act, shall entitle the holder thereof to rank on the list of candidates from which teachers are to be selected for any position in the high, normal, grammar, intermediate or primary schools, and the State Superintendent of [Public] Education is hereby required to furnish the school board with the names of such qualified persons, and the grade of certificate issued by him.

SEC. 12. *Be it further enacted, etc.,* That this act shall go into effect from and after its passage, and all laws, parts or provisions of law contrary thereto are hereby repealed.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.
(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved April 1, 1874.
(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:

P. G. DESLONDE,
Secretary of State.

Excerpts of this act are found in plaintiff's brief at page 55.

To authorize the Council of the City of New Orleans to levy a police tax; to regulate levies of taxes, the proceedings of tax suits, and the jurisdiction of the district courts for the parish of Orleans in reference thereto; to define and punish forgery in certain cases; to authorize the funding of the floating debt; to consolidate, limit and provide for the debt of the city of New Orleans, principal and interest; to authorize a tax for the support of the city government, and to establish a fiscal agency, defining its duties, and for the better enforcement of the collection of all taxes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the Council of the City of New Orleans be and is hereby authorized and empowered to levy and assess a police tax, additional to all taxes levied in the month of December, 1871, for the purpose of defraying the police expenses of the year ending September 30, 1872, and any deficiencies in the revenues of the city arising from the over-receipt of police warrants for city taxes.

SEC. 2. *Be it further enacted, etc.,* That said levy shall be made and assessed according to the assessment rolls homologated by the City Council December 12, 1871, which, for this purpose, and all future official reference thereto, shall be denominated the assessment rolls for 1872; the city taxes levied December 19, 1871, shall be denominated the taxes of 1872; and the licenses under ordinance No. 1229, administration series, shall be denominated the licenses of 1872.

SEC. 3. *Be it further enacted, etc.,* That the tax hereinbefore authorized shall not exceed one-half of one per cent of the assessed valuation of the real, personal, and mixed property, according to the said rolls.

SEC. 4. *Be it further enacted, etc.,* That said levy be made, any provision of section seven of act No. 42 of 1871

to the contrary notwithstanding, which is hereby repealed so far as it may conflict with any provision of this act.

SEC. 5. *Be it further enacted, etc.,* That the Administrator of Public Accounts shall, as soon as practicable after the passage of this act, cause to be made out the bills required for the collection of the tax, which shall be signed by him, or a person or persons authorized by him so to do. Or he may consolidate the additional police tax herein authorized with the former city tax levies, and make and remake bills for the same, either together or separately; all bills, whether of the present or said former levies for the year 1872, to be signed by the Administrator of Public Accounts, or by a person or persons authorized by him so to do.

SEC. 6. *Be it further enacted, etc.,* That the said bills for additional police tax shall be collectible from March 1, 1872, to July 31, 1872, and exigible thereafter; and may be sued together with or separately from the other city taxes of the year 1872: *Provided,* No additional fee shall be allowed to the sheriff or clerk for the fact of there being separate bills for different levies of taxes or separate bills for different properties of the same person; but the taxes of each delinquent may be embraced in a single suit, with but one fee to the clerk and sheriff for their respective services. No crier's fee shall be allowed in any tax suit hereafter.

SEC. 7. *Be it further enacted, etc.,* That for the purpose of all city tax suits, whether for police or other purposes, and whether of one hundred dollars or over or under that amount, all or either of the district courts for the parish of Orleans, excepting the first and second, are hereby expressly invested with jurisdiction, and justices of the peace are hereby divested of such jurisdiction: *Provided,* The Second District Court may entertain jurisdiction of tax suits against successions.

SEC. 8. *Be it further enacted, etc.,* That if at any time any assessment made by or under authority of the Council of the City of New Orleans shall be declared or become void

and without effect by reason of non-compliance with any formality or requirement relative to the imposition of municipal taxes, then and in that case the council shall have full authority and power, by ordinance or otherwise, to make a new assessment thus becoming or being declared null and void and to place the tax bills or certified accounts in court and obtain judgment therefor, after publication for the length of time and in the manner provided for the collection of city taxes. It being the true intent and meaning of this law that the city of New Orleans shall not lose the right to collect annual taxes by reason or on account of any legal informality.

SEC. 9. *Be it further enacted, etc.*, That no money shall be received or collected by the city of New Orleans, by any department, unless an order, bill, or receipt for the same shall have been made out by the administrator of the proper department and signed or countersigned by him, or by some person authorized by him; and no receipt to any person for money, notes, or anything else taken by the city on account of revenue, or on any other account, shall be valid unless so signed or countersigned.

SEC. 10. *Be it further enacted, etc.*, That it is hereby declared a felony to forge or falsely sign, fill up, alter or utter, or publish as true any bill, certificate, receipt, account, or any part thereof, as given, made out or signed by the mayor or any administrator of department of the city of New Orleans, or by any officer, deputy, clerk or other person authorized by them or either of them, and which may be given credence to, or pass, or be received as genuine or authorized, and is calculated to deceive or defraud any holder, receiver, transferee, pledgee or other person. Any person, upon being found guilty of such offense, shall be sentenced to imprisonment at hard labor not less than two or more than twenty years.

SEC. 11. *Be it further enacted, etc.*, That all taxes due and unsettled at the passage of this act, or hereafter becom-

ing due, are hereby declared to be a lien and privilege upon the property assessed for the same, to have priority over all other liens or privileges. And against all other properties of the delinquent they shall have the force and effect of a lien from the date of their being recorded in the mortgage office as hereinafter provided.

SEC. 12. *Be it further enacted, etc.,* That as soon as practicable after the passage of this act, the Administrator of Public Accounts shall prepare registers of all taxes due and exigible. For the purpose of aiding him in so doing, the Administrator of Finance, the clerks of courts, the civil sheriff, and all attorneys and ex-officers shall turn over to him, for his temporary use, all bills, accounts, writs and records in their hands; and for so doing shall not be entitled to any fee. The Administrator of Public Accounts shall enter in duplicate registers all the necessary particulars and dates for recording and settlement of the accounts, including interest and costs incurred. One of said registers, for taxes of 1871 and previous years, with index thereto, he shall deposit in the mortgage office, and the deposit of said register and index shall be a due recording and inscription of the lien and mortgage in said office; and no fee shall be allowed to the recorder of mortgages for such inscription; but he shall be allowed one dollar each for canceling the same, which he may do upon the certificate of the Administrator of Public Accounts of the payment or settlement thereof. After the thirty-first of July in each year a like register for the unpaid taxes of the year shall be in like manner deposited, under the same provisions as to foregoing.

SEC. 13. *Be it further enacted, etc.,* That for unbonded debts existing December 31, 1871, and unpaid at the time of the passage of this act, or caused by receipts of certificates of 1871, for revenues proper of 1872, and for excavations and levees, drainage machinery and revetments authorized by law or required for the protection of the city from overflow or inundation the city may issue from time to time, as they

may be required, bonds of the denominations of five hundred and one thousand dollars, having fifty years to run, and bearing seven per cent interest, principal and interest payable in gold in New York or New Orleans, and at any other points that the council may designate, with quarterly coupons, and that the bonds thus issued shall be called the new consolidated debt of New Orleans. No bonds shall be issued but by authority of the Council, nor for a lower rate than ninety cents on the dollar; all issued for excavations and levees, authorized by act No. 30 of 1871, or by drainage laws previously enacted, shall be marked "Drainage Series," and all taxes collected for drainage, and not required for the payment of drainage warrants, shall be devoted to the purchase from the lowest bidder of bonds issued for drainage; no bid to be accepted above par, and the right reserved to the council to reject all unsatisfactory bids.

And for other bonds of the city not matured, bearing interest at not less than seven per cent, the city may exchange bonds of the new consolidated debt, at such prices, not less than par, for the new consolidated debt bonds as may be found to the advantage of the city; but no exchange shall be effected except by consent and order of the council, publicly given, or ordinance fully authorizing the same.

For all bonds fully matured and payable so soon as the term they were issued for shall have expired, and which the city shall not have available funds to pay in cash, the city may exchange new consolidated bonds, at the rate of not less than ninety cents on the dollar on demand of the holders of the bonds so matured.

And it is furthermore enacted that at no time shall the face of the bonded debt outstanding and unredeemed added to the certified debt of every form exceed twenty-three millions of dollars and all issue of bonds or evidences of indebtedness whatever in excess of said amount shall be unlawful, and shall not import or convey any obligation. And if any person under color of office, or otherwise, shall issue any

bond or warrant in violation of this section, he shall be prosecuted criminally by indictment or information, and upon conviction, shall be condemned to imprisonment for two years; and any person negotiating or attempting to negotiate such bond or warrant shall be considered an accessory to the fact, and subject to the same punishment as the said offender.

SEC. 14. *Be it further enacted, etc.,* That within the months of November and December, 1872, and annually thereafter, the council shall adopt estimates of receipts, and expenditures (the latter including police and excluding schools) for the ensuing year. The estimate of expenditures shall not be finally adopted until one week shall have elapsed after final adoption of the estimate of revenues, and it shall not exceed the same.

SEC. 15. *Be it further enacted, etc.,* That the council, after the adoption of the estimate, shall proceed to levy the annual taxes required to wit:

First. The city debt tax, which shall be based upon the detailed estimate of the sinking funds and interest falling due. For all bonds for which no other retiring provision exists by law, an estimate shall be included of not less than two nor more than ten per cent of the face of the bonds outstanding of any of the several issues, which shall be applied to the retiring of bonds offered at the most advantageous rates, no bid to be accepted higher than par, and the right reserved to reject all bids. No limit other than herein laid down shall apply to this tax, which is hereby declared a vested right of the bondholders interested.

Second. A tax for current city expenses, including police and exclusive of interest and schools. This tax shall in no year exceed one and a quarter per cent upon the assessed value of real, personal and mixed property.

These taxes shall bear the name of the year in which they shall be collectable, and the assessment upon which they shall be made shall be termed the assessments for the said year.

SEC. 16. *Be it further enacted, etc.,* That no provision in any general law of the State limiting the power of taxation by the several cities, towns, parishes and other corporations, shall be held to apply to any of the taxes of the city of New Orleans, herein or otherwise specially authorized to be levied.

SEC. 17. *Be it further enacted, etc.,* That as soon as practicable after the passage of this act, the council shall proceed to the election of a chartered State or a national bank, as Fiscal Agent of the city of New Orleans; and upon its election, acceptance and entering into due notarial contract, all present fiscal agencies shall cease, and their assets, duties and functions shall be transferred to the fiscal agency herein created. That the Administrator of Finance shall deposit with said fiscal agency, daily all moneys collected by him from whatever source. That the Fiscal Agent shall set apart, and keep in separate funds, the sums of money deposited on account of the consolidated loan tax, and for the payment of the interest and principal of the various bonds issued and to be issued by the city of New Orleans, and such funds shall not be subject to the draft of any city official, but shall be a vested right of the bondholders. That under the direction of the commissioners of the consolidated debt, or of the council, under existing laws said Fiscal Agent shall purchase from time to time, before maturity such bonds of the city as there may be funds in its hands to pay for, and shall cancel the same. In the event of interest coupons falling due previously to the collection and deposit of the taxes imposed for the payment of said coupons, it shall be nevertheless obligatory on the fiscal agency hereby created to pay said coupons on presentation, and any amount thus advanced shall be reimbursed to said agency out of the first taxes collected.

It shall have an agency in the city of New York (for the performance of duty by which it shall be responsible), for the payment of coupons, or redemption of bonds provided to be paid there. The fiscal agency hereby created may be

changed and taken away by the council by a vote of three-fourths of the members thereof, for cause; provided, the same cannot be removed, or the assets transferred without its consent, so long as the city is indebted to any fund or account, and until the fiscal agency is fully reimbursed, or so long as there shall remain any contract unexpired between it and the city.

SEC. 18. *Be it further enacted, etc.,* That all laws or parts of laws in conflict with this act be and the same are hereby repealed, so far as they are in conflict, and this act shall have force and effect from its passage.

(Signed) O. H. BREWSTER,
Speaker of the House of Representatives.
(Signed) P. B. S. PINCHBACK,
Lieutenant Governor and President of the Senate.

Approved April 26, 1872.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

F. J. HERRON,
Secretary of State.

SUPREME COURT OF THE UNITED STATES

No. 43

October Term 1910

STATE Ex Rel. FISHER, GASQUET, Et Als.,

versus

MAYOR AND COUNCIL OF NEW ORLEANS.

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CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

IN EQUITY

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"To the Honorable the Supreme Court of the United States:

Into Court come: John B. Fisher (and the other Relators); Who say that in the record and proceedings whereof your Petitioners are plaintiffs and relators, and the Mayor and Council of the City of New Orleans are defendants, there is manifest error as hereinafter more especially stated to the great damage of your petitioners and petitioners' assign the following errors into which the Supreme Court of Louisiana fell in deciding that relators did not have a valid contract with the Board of School Directors of the City of New Orleans by reason of the limitation placed on said school Board, by the Council of New Orleans, whereas, in truth the contract which petitioners had was a valid contract made payable out of the special school tax levied by the City of New Orleans to pay said contract and was protected from impairment by the Constitution of the United States.

183 1. That the estimates furnished by the School Board to the City in 1873-1874, 1875, 1876, 1877 and 1878 were the proper guide for the expenditures to be incurred by the School Board as well as the amount of the tax to be levied by the City of New Orleans.

2nd. That the expenditures made by the School Board did not reach the limit of the estimates by $158,547.20.

3rd. That the tax levied by the City of New Orleans did not reach the estimates of the School Board by $363,812.59, which amount of deficiency the city was bound to levy.

4th. That the Legislature of the State of Louisiana did not and never did intend to deprive your petitioners of their property

and Section 10 of the Act of 1873, No. 36, has no application of the claims of petitioners; but if the act could be so construed, then Section 10 is violative of the Constitution of the United States, by depriving petitioners of their property without due process of the law.

5th. That the Act of 1870, No. 5, of the Extra Session, does not apply to this case; but if said act can be construed to apply to this cause, then it deprives petitioners of all remedy and takes away their property without due process of law;

6th. That when your petitioners obtained their judgment against the Board of Directors of the City of New Orleans, all questions as to the validity of their contract were set at rest and as long as the judgment remain in force petitioners are entitled to all the remedies provided by law for the collection of said judgments; it is admitted by the respondents and not denied that said judgment is now in full force;

7th. That the rate of taxation existing at the time of the contract continues to exist until the contract has been satisfied. The repeal of the Act of 1873, and the limitation of taxation imposed by the Constitution of 1898 and by the City Charter of 1896, can have no application to the contracts of petitioners without impairing the obligation of their contract;

8th. That the estimates furnished by the School Board to the City of New Orleans, were the guide by which the expenditures of the School Board were controlled and the revenues of the Board were to be provided, otherwise all the symmetry of the system provided for by the act, was destroyed;

9th. A writ of mandamus to enforce the collection of a judgment is a mode of execution and as long as the judgment remains in full force and effect. plaintiff is entitled to his execution.

The levy of a tax is the sole means by which judgment creditors of corporations which own no property, can be collected as is shown by the return on the writ of execution issued herein;

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10th. It was impossible for petitioners to have asked for the levy of the tax sooner, for the reason that the amount of deficiency had to be ascertained so as to fix the rate required for the levy of the tax necessary to pay your petitioners;

That the amount of deficiency was only fixed after the decision rendered by the Supreme Court of the United States in the case of Fisher vs. City of New Orleans, decided in 1901, No. 281 of the October Term 1899.

The lower Court allowed complainants seventy one thousand dollars with five per cent interest from the date of judgment; on appeal, the Circuit Court of Appeals for the Fifth Circuit, allowed petitioners twenty years of interest at five per cent, which amount, if collected, would have greatly reduced the deficit; the Supreme Court allowed five per cent from judicial demand. It was only after the rendition of this judgment and the failure to collect any further back taxes that the deficiency and the rate of taxation necessary could be ascertained.

These dates as fixed by the record are so recent that petitioners cannot be charged with laches;

11th. That the Corporation of the City of New Orleans is bound to-day in the same manner and to the same extent it was in 1873.

12th. Petitioners are entitled to have the City of New Orleans make good the deficit of the ¼ of one percent School Tax levied by the City of New Orleans in 1874, 1875, 1876, 1877 and 1878, still uncollected and uncollectable, the sum of $150,451.89, and the Court erred in refusing to recognize the validity of petitioners' contract to this extent, notwithstanding the change of the City Charter and the limitation of taxation fixed by subsequent State Statutes. R. 85-86.

13th. That the validity of all these contracts was recognized by the State of Louisiana in the Acts of 1880, No. 49, Page 48,

passed in conformity to the requirements of the Constitution of 1879, and by the Act of 1894, No. 136.

14th. That the validity of said contracts was recognized by the City of New Orleans in Ordinance No. 6438, Administration Series, passed in accordance with Act No. 49 of 1880. R. 53.

15th. That the City of New Orleans is estopped from claiming the nullity of petitioners' contract, having retired $69,991.99 of said certificates at the face thereof without claiming that the funds arising from the School Tax should have been distributed pro rata, by reason of any deficiency in the revenues of the School Board. R. 74.

Wherefore petitioners pray that the judgment of the Supreme Court of Louisiana be reversed and that the mandamus prayed for, be made peremptory and petitioners pray for general relief, etc.

(Signed) CHAS. LOUQUE,
Atty.

COPY

SUPREME COURT OF THE UNITED STATES

No. 43

October Term 1910

JOHN B. FISHER et als.,

PLAINTIFFS IN ERROR,

versus

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

Brief on Behalf of Relators, Plaintiffs in Error.

This case comes from the Supreme Court of Louisiana by virtue of a writ of error granted by the Chief Justice of Louisiana.

I

The question presented by this Record, is one wherein relators claim to have valid contracts, the obligations of which have been impaired by subsequent State legislation, and wherein the highest Court of the State, has decided adversely to their contention.

II

Relators having obtained judgments against the Board of Directors of the Public Schools of the Parish of Orleans, to enforce payment of the salaries earned by them as school teachers, payable out of the taxes levied by the City of New Orleans for

schools, are now seeking by these proceedings to obtain a mandamus to compel the Mayor and Council of New Orleans, to levy a tax sufficient to pay these judgments.

This case is in many respects, similar to that of *Louisiana ex rel Hubert vs. Mayor and Council of New Orleans*, lately decided by this Honorable Court, and reported in the 215th U. S. 170.

The main features of similarity between the two cases, are that the School Board, like the Board of Metropolitan Police, was a separate and independent corporation from the City of New Orleans, exercising its functions in the territory comprised within the limits of the City of New Orleans, and authorized to contract debts, payable out of school taxes to be levied by the City of New Orleans.

The School Board, like the Board of Metropolitan Police, owned no property out of which its creditors could satisfy their just debts. They could only look to the taxation which the City of New Orleans was ordered to levy to satisfy their claims.

Before the payment of the claims had been made, the law authorizing the levy of the tax was repealed, leaving the relators without remedy and impairing the obligations of their contract.

The return to the petition for mandamus, made by the Mayor and Council of New Orleans, as well as the decision rendered by the Supreme Court of Louisiana, admit the contractual relations of the parties. (R. 7-130)

The great point of contention is, that the contracts entered into between the relators, who were school teachers, and the School Board, are not valid, because they were conditioned, under the law, on the fact that the School Board should not exceed its revenues.

The argument is that the School Board did exceed its revenues, that the contracts were null and void and the creditors must lose their claims. The creditors were obliged to take heed that due revenues had been provided.

We take a direct issue with the respondents and with the Louisiana Supreme Court. We will show that the School Board did not, exceed its revenues and was fully empowered to contract for the services of the relators and having done so, they must be paid for their services.

The Board of School Directors was created by Act No. 36 of 1873. They were directed to employ the teachers at an *annual* salary. They had full charge of the schools. Their contracts could not be partly good and partly bad. The persons employed by them were to be paid out of the special taxes directed by the Act to be levied by the City of New Orleans, for the support of the schools.

Relators after having rendered their services, brought suit and recovered judgment against the School Board. Some of the judgments were made payable out of the school taxes levied by the City of New Orleans. Other judgments were absolute and without restriction, or designation of the manner in which they were to be paid. These judgments forever fixed and settled the validity of the claims held by relators.

The Act of 1873 No. 73 under which the contracts were entered into, ordered the City of New Orleans to levy a school tax without limit as to the maximum, but limited only as to the minimum amount which should be levied, to pay the indebtedness of the School Board.

> "The power of taxation conferred by law, entered into the obligation of the contracts, and any subsequent legislation withdrawing or lessening such power, leaving the creditors without adequate means of satisfaction, impaired the obligation of their contracts, within the meaning of the Constitution."
>
> 97 U. S. 293, *Memphis vs. United States:*
> 4 Wall 535, *Van Hoffman vs. City of Quincy:*
> 122 U. S. 284, *Seibert vs. Lewis:*
> 116 U. S. 289, *Mobile vs. Watson:*
> 140 U. S. 41, *Scotland County Court vs. Hill.*
> 215 U. S. 178, *Hubert vs. New Orleans.*

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The Act of 1873 No. 73 authorizing the contracts and the tax was repealed by the Act of 1888 No. 81.

This repeal was an impairment of the contracts held by relators now merged in their judgments against the School Board.

The City of New Orleans, during the years 1873 to 1878, inclusive, levied the minimum amount of taxes called for by the Act of 1873 No. 36, but by reason of the antagonistic position taken by the Mayor of New Orleans, during these years against the School Board, the City failed to collect the sum of $150,451.89, of the amount levied.

In the case of *State ex rel. L. A. Hubert vs. Mayor and Council of New Orleans*, the City levied and collected the tax but diverted the proceeds to her own use, and this Court said that the duty of the City was not at an end by the simple levy and collection of the tax but that she must pay the proceeds to the party entitled to them, and that her power to levy and collect remained in full force until the contract creditor had been satisfied. That the repeal of the law authorizing the contract impaired the obligations of the contract and was null and void.

How much stronger is this case where the tax was simply levied and not collected. The power of the City remains in full force notwithstanding the repeal of the Act of 1873 No. 36, and the limitation of taxation, subsequently made by the State Legislation, until the obligations arising from these contracts are paid and satisfied.

Another point of similarity between this case and that of Hubert, is that the various funds levied for school purposes during 1873 to 1878, inclusive, constitute but one fund for the payment of the judgments of relators and these claims are for the same years, 1873 to 1878, inclusive.

The Supreme Court of Louisiana has decided that these taxes constituted one fund, in the following cases:

POOR

44 A, 184, *Fisher vs. School Board:*
45 A. 342, *Gasquet vs. School Board.*

The decisions in the two cases above cited were rendered in favor of two of the relators in this case and constitute *res judicata.*

We will now proceed to discuss the merits of this cause, explaning and refuting the different grounds of objections made by the Mayor and Council in their return to the petition for mandamus and maintained by the Supreme Court of Louisiana.

1. We will first present the issues raised by the pleadings giving them in full.

2. We will next discuss the effect of the non-collection of the tax levied and

3. The nature of the contract and show their entire legality.

4. We will then show that our certificates are not prescribed, that is, barred by the statutes of limitation; that our judgments are in full force and that instead of remaining inactive, as claimed by defendants, relators have been in constant and persistent litigation and are not guilty of laches.

5. Next, we will demonstrate that the City of New Orleans is today the same corporation against which we have claims and judgments.

6. And finally, we will show that Act of 1870, Extra Session, has no application to this cause.

III

First. The petition for a mandamus alleges that your relators, (naming all of them, some thirty-five in number)

COPY

have claims against the Board of Directors of the City School of New Orleans now reduced to judgments in the following cases, (giving each case by number of the docket and its title) amounting in the aggregate to about two hundred thousand dollars;

That all of said certificates and judgments were issued and based on specific and express contracts entered into between the Board of Directors of the City Schools and the relators, who were teachers and others on contracts which have been transferred to relators;

That said contracts were entered into in the years 1874, 1875 and 1876 under the provisions of Act 36 of 1873, which authorized the School Board to enter into said contracts and made them payable out of a special tax to be levied by the City of New Orleans, for the support of the public schools;

That under Section 4 of said act, no limit of the rate of said special tax was fixed;

That under the law the rate of taxation existing at the time of the contract formed a part of the contract and is read into it and continues to exist irrespective of subsequent legislation, or constitutional enactments, restricting the power of taxation;

That Section X of Article I of the Constitution of the United States protects the contracts of relators from being impaired by subsequent legislation;

That the limitation of taxation as contained in Article 232 of the Constitution of Louisiana of 1898 is null and void and contrary to the Constitution of the United States;

That relators obtained from the City of New Orleans an account of all the school taxes collected by her, but the payment made on such accounting was not sufficient to satisfy the outstanding contracts;

That a sufficient amount of school taxes has not been levied and collected for the years 1873 to 1878 to pay and satisfy the judgments and claims held by your relators;

That a writ of *fieri facias* has been issued against the School Board and returned *nulla bona* after due demand;

That relators know of no property owned by the School Board liable to seizure;

That the authority granted to the Board of School Directors to enter into contract with relators and their transferees payable out of the proceeds of the special tax to be levied by the City of New Orleans is authority to levy the tax to pay the obligations created by and arising out of said contracts;

That relators are entitled to the levy of a special tax to pay their judgments which the City of New Orleans refuses to levy;

The prayer was for the issuance of a writ of mandamus. (R. 1 to 3.)

For return to the writ, the City pleaded the exception of no cause of action, which was overruled. The City also pleaded a general denial and further answering averred that Section 4 of Act 36 of 1873 provided as follows:

"That the Council after receiving the estimate required in this act, for the year 1873, or subsequent years, shall proceed to make provisions for the public schools, in addition to those required in Section 3 and those ordered for the protection of city property. For the purpose of such support, it shall levy a tax of not lesss than one-fourth of one per cent on all taxable property in the City of New Orleans; and no provision in any special or general law, limiting the aggregate power of taxation of the City of New Orleans, or of the Council, shall prevent the levying of at least one-fourth of one per cent per annum for school purposes."

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"Further answering these respondents deny that Section 4 of Act 36 of 1873 intended to confer, or did confer, upon relators or upon other persons dealing with the Board of School Directors of the City of New Orleans any contract right to an unlimited special tax to be levied by the City of New Orleans for school purposes; but respondents aver that the only special tax and the only tax, which by Section 4 of Act 36 of 1873, the City of New Orleans was bound to levy for school purposes for the years 1873, 1874, 1875 and 1876, and subsequent years, was one-fourth of one per cent; and that the City of New Orleans did in the years 1874, 1875 and 1876 levy in accordance with Section 4 of Act 36 of 1873 a special tax for school purposes.

"Further answering these respondents aver that the only rate of taxation, special or otherwise, which formed part of any contract made by relators with the School Board, if any tax of any amount did form part of such contract, which respondents deny, was a special tax of one-fourth of one per cent; all taxation by the City of New Orleans for school purposes over and above said one-fourth of one per cent being by Section 4 of Act 36 of 1873 left to the discretion of the City of New Orleans, and constituting in no way or manner any part of any contract made between relators and the Board of School Directors of the City of New Orleans, or between the Board of School Directors or the City of New Orleans and any other person.

"Further answering these respondents aver that the total amount collected up to date of the special tax of one-fourth of one per cent levied by the City of New Orleans for the years 1874, 1875 and 1876, as aforesaid, has been accounted for and paid over to the relators by the City of New Orleans, and all in-coming collections of said special tax for the years 1874, 1875 and 1876 are being accounted for and paid over to the relators.

"Further answering these respondents aver that if the amount collected, as aforesaid, of the said special taxes for the years

1874, 1875 and 1876 are not sufficient to satisfy relator's claims, relators have no recourse against these respondents for any amounts which may be due them.

"Further answering these respondents aver that Section 10 of Act 36 of 1873 provides:

" 'That the Board of Directors of Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed, that due revenue shall have been provided to satisfy all claims, otherwise they shall lose and forfeit the same, and no action and execution shall be allowed in aid thereof; that the said board shall not exceed its power in incurring of debt.'

"Further answering these respondents deny that relators have any contract right against these respondents protected by Section 10 of Article 1 of the Constitution of the United States, or any contract right or privity of contract of any kind or nature whatsoever affecting these respondents.

"Respondents further deny that the Board of School Directors of the City of New Orleans created the obligations set forth in relator's petition by virtue of any contracts legally entered into, and deny that relators have any right to invoke the protection of the Constitution of the United States herein, and deny that the provisions in regard to the impairment of contracts are, or have been, in any manner violated by these respondents.

"Further answering respondents deny that certificates of indebtedness issued by the Board of Directors of the Public Schools of New Orleans during the years 1874, 1875 and 1876, or such judgments and claims as relators allege to hold, are evidences of debts against the City of New Orleans or indebted-

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ness of the City of New Orleans, and that relators have no claim of any kind or nature whatsoever against these respondents therefor.

"Further answering these respondents aver that the City of New Orleans and these respondents cannot be compelled by mandamus to levy any special tax to pay relators' judgments, for the reason that Section 1 of Act 5 of the Extra Session of 1870 forbids any Court in the State of Louisiana to issue any writ of mandamus against any official of the City Government to compel the payment of any claim against the City of New Orleans.

"Further answering these respondents deny that relators were at the time when their alleged services were rendered and their alleged contracts with the Board of School Directors of the City of New Orleans were executed, entitled to a writ of mandamus to compel the City of New Orleans to levy a greater tax for the years 1874, 1875 and 1876 than the one-fourth of one per cent; and that relators, by allowing over thirty years to elapse before making any application for such a writ, have acquired any right thereto; but should be, even if they had originally a right to a writ of mandamus, held to have waived the same.

"Further answering these respondents aver that if relators have merged any of the judgments alleged to have been rendered in their favor in the Courts of the State of Louisiana into judgments of the United States Circuit Court for the Eastern District of Louisiana, they are not entitled to a writ of mandamus from the Courts of this State to aid them in the execution of the judgments rendered in the United States Circuit Court.

"Further answering these respondents deny that the power of the City to levy taxes for the years 1874, 1875 and 1876, except in so far as the special tax for school purposes of one-fourth of one per cent, which, by Section 4 of Act 36 of 1873,

the City of New Orleans was directed to levy, and which it did levy, was unlimited; but avers that its power to levy taxes for the years 1874, 1875 and 1876 was and is limited legally and constitutionally and was and is exhausted."

We have copied the defence in full so as not to be mistaken in our statement. (R. 5.)

Second. When it comes to a question of contract which is alleged to have been impaired, the Supreme Court of the United States will examine that question for itself and will not be bound by the opinion of the State Court. Nor will this Court be limited to the consideration of the mere language of the opinion, but will examine the substance and effect of the decision. 215 U. S. 170 La. *ex rel Hubert vs. Mayor and Council, etc.* quoting 172 U. S., 102-116; *McCullough vs. Virginia*, 207 U. S. 416; *Sullivan vs. State of Texas*, quoting the same Virginia case and 1 *Black* 436-443, *Blank vs. Skelly:* 177 U. S., 66-677; 181 U. S. 142-147; 197 U. S. 570; 168 U. S., 488-501; 153 U. S., 486-492.

The Supreme Court of Louisiana admitted, in their opinion "as part of the facts of the case that there was a contract of employment entered into between the School Teachers and other public school employes and the School Board; that for the services rendered by them, the School Board issued certificates." (R. 130.)

The Court also finds that "the City does not question the fact that judgments were obtained upon these certificates; that the City was a party to the suits, but the contention on its part is that the Court rendered judgment in its favor in these suits." (R. 130.)

Continuing, the Court said: "The insufficiency of the amount levied by the City Council to pay this indebtedness is the gravamen of relators' complaint. The predicate of their complaint is that under Section 4 of the Act of 1873 which provided that the School Board should make an estimate for the year 1873

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and the years following, of the amount which the Board deemed necessary for the support of the public schools, was binding upon the City Council and that the City should have levied a tax equal to this estimate, furnished to the Council, at the time." (R. 130.)

"The act in question provided further that the City was to levy a tax of not less than two and a half mills on all property subject to taxation in the City. (R. 130.)

"It is in place to state here, in order to have all the facts before the Court on this point, the amount of taxes levied by the City for the different years and the amounts furnished by the State:"

Then follow a list of figures giving the estimates, year by year, of the School Board for 1874 to 1877 inclusive, amounting to $2,063,708.00 and the amount levied by the City for each of said years to which is added the State's portion paid, making a total of $1,699,875.41 which is to be deducted from the amount of estimates and leaves as a deficit $363,812.59.

"The contention of relators is that the City should have levied the three hundred and sixty three thousand eight hundred and twelve 59/100 dollars, instead of two and a half mills that was levied." (R. 130.)

Evidently the Court meant that the claim is made by relators that this sum should have been levied over and above the two and a half mills. It becomes necessary to pass over some of the points raised by the Court in order to continue the presentation of the question of contract, raised under the present head.

The Court goes on: "That the City Council did not adopt the estimate of the School Board in 1873 and other years following, *in making up its budgets*, is the next ground presented by relators. Here relators' contention is that there was no limit

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placed on the City Council by statute; it could levy a tax for schools to any amount." (R. 132.)

"That may well have been, at the same time, it did not deprive the City Council from all discretion as to the amount to be set aside for schools. In following the statutes, we notice that there was some limit, if not on the City Council in regard to schools, there was a limit on the Board of Directors of the schools, for the latter were forbidden from entering 'into contracts greater than the amount of the revenues provided for according to this act or other school laws existing, it being the intent hereof that parties contracting with said Board, shall take heed that due revenues shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same and no action or execution shall be allowed in aid thereof and that the Board shall not exceed its powers in incurring debt.' Act 36 of 1873." (R. 132.)

"The revenues were provided by the City Council, not by the School Board. It was incumbent upon it (the said Board) after the *budget of the City Council had been adopted* not to exceed the *amount allowed by the budget.* This is the interpretation we place on the last quotation above.

"It was further incumbent upon the Board to heed the extent of the revenues provided. Not only the Board was to take heed of the amount of the revenues, but according to the terms of the act from which we have quoted, the creditors themselves were warned of the result, if the expenses were in excess of the revenues. If it exceeded, the creditors themselves were to lose their claims. (See the statute cited above.)" (R. 132)

"But above all, whatever right there might have been, should have been urged in due time.

"It does not appear that the School Board ever objected or any of the creditors at the time to the amount levied.

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"It must be borne in mind that the City was not indebted for this amount. This has long been decided.

Labat vs. City, 38 A., 283.

"The Council must have been vested with some discretion at the time. The estimates to be furnished by the School Board provided for in the act were in their nature advisory and not mandatory.

"It surely was not the intention to divest the Council of its authority and to invest the School Board with peremptory authority to compel the City to set aside a larger amount than the City Council deemed it proper (provided always that the one-quarter of one per cent were levied)." R. 132.)

"We are decidedly of the opinion that the City is not bound to make good an omission, negligence or dereliction (if there were such on the part of the Council of many years ago).

"Debts and liabilities should always be discharged, if at all possible by those who are liable therefor. Where the debts were not incurred by the authority from which the judgment is demanded, where the taxes levied to the extent possible have been collected or accounted for, it would be difficult to conclude that another tax, at this date, should be levied." (R. 133.)

Thus we have placed before your Honors all that has been said against the interpretation which we have given to our contracts with the School Board and of the obligations we claim to flow from such contracts.

The right of the School Board to enter into a valid contract with relators, not one tainted with a vice which might destroy it, at the will of the School Board and without the consent of relators, after their services had been rendered, and the power which the Board had to make the contract payable out of their estimated revenues, is at issue.

We shall now proceed to give the facts to this Court, on which we base our conclusions:

Admitting as true, all that the City has averred in the City's return and all that the Louisiana Supreme Court has said, it is clear that, if there be any restriction on the School Board, as to their power to contract debts, the restriction did not include the indebtedness created within the levy of the one-quarter of one per cent school tax.

The power of the School Board to contract within this limit is not denied. It is beyond dispute, that the City of New Orleans having levied the one-quarter of one per cent, the creditors of the School Board have the right to exact the full measure of that levy to satisfy their claims.

The record contains the detailed estimate of the revenues and expenses of the School Board for each year from 1873 to 1878 inclusive. (R. 72 to 86.)

A condensed statement of the school taxes levied and *uncollected* is found at pages 85 and 86, and is as follows:

1873	23,798.13
1874	17,803.80
1875	13,879.45
1876	18,934.48
1877	15,441.87
1878	15,771.86
	105,629.59
Total reduction by cancellations, judgments, etc	44,822.30
Making a total of	$150,451.89

To which amount these creditors who have rendered their valuable services on the faith of this levy are entitled.

This amount should have been collected and paid over, but it was not.

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The School Board did not exceed its revenues, when it entered into contracts based on the above amount of revenues which it never received. What good reason can be given why the creditors who contracted on the faith that they would be paid out of this tax levy, should lose the fruits of their labor because the City of New Orleans did not and would not collect the tax? The simple passage of an ordinance levying the tax was not sufficient to satisfy the creditors of the School Board.

The repeal of the Act of 1873, does not affect the rights and obligations of the parties, as long as the obligations remain unsatisfied.

Your Honors will find the ordinances levying the tax at pages 41-43 and 44 of the printed record.

You will also find that the Mayor of New Orleans was at that time antagonistic to the School Board and his message to the Council in the one case, advising the non-levy of the school tax and his veto to an ordinance levying the school tax in the other case, sufficiently explain the failure to collect the tax. (R. 45-48.)

If the levy of a tax, its collection and subsequent diversion, causing a failure to pay it over to the Board of Metropolitan Police, was not a satisfaction of the claims of the creditors of that Board, as your Honors have decided in the case of *Hubert vs. New Orleans*, how much stronger is this case, where the tax has simply been levied, but never collected; and no successful effort made to collect it?

In the first case, the tax payer has complied with his obligation by paying his tax, but in the latter case he is still under the obligation of paying.

There is but one way in which to satisfy the creditors of the School Board, who have performed their services, on the faith that the tax would be collected and that is, by collecting the tax and paying it over to them.

The Louisiana Court seemed to be of opinion, that an effort to collect, was a sufficient satisfaction of the obligation. (See the last clause of the opinion. R. 133.) The creditors of the School Board believe that something more substantial is due to them.

The repeal of the Act of 1873, No. 36 by the Act of 1888, No. 81, can have no effect on the rights of relators, because the repeal impaired their obligations.

The total amount collected in 1906 of the school taxes are, for 1874, twenty-five cents; 1875, one and 95/100 dollars; 1876, one and 49/100 dollars; 1877, forty-six cents; 1878, sixty-five cents. (R. 63.) This shows that the collection is exhausted.

Third. We now pass to the question:

Whether the School Board was authorized to contract within the limits of their estimates furnished to the City Council, or whether, as decided by the Louisiana Supreme Court, the City Council was vested with superior authority, and had a right to disregard the estimates furnished, and bind the School Board to confine its expenses within the appropriation, "as contained in the Council's budget ?"

When it comes to a matter of contract, this Court will decide for itself what are the rights of the parties. In this instance, your Honors can be guided by the previous adjudications of the State Court.

The case of *Labatt vs. New Orleans*, 38 A., 286, is quoted by the State Court in support of the opinion under review. The precise question now under discussion was before that Court, and in construing the language of Section 4 of the Act of 1873 No. 36, the Court said:

> "*The law required the estimate of the* PROBABLE *expenses* to be made annually, by the Board of School Directors and *to be presented to the City Council*, WHICH WAS REQUIRED

See p. 58 for Act No. 36 of 1873.
See p. 76 for Act No. 81 of 1888.

COPY

TO LEVY THE TAX NECESSARY TO COVER THE ESTIMATE, *which tax could not be less than one-quarter of one per cent* on the taxable valuation of all property in the city.
Sections 2-4 of Act 36, of 1873."

The Court in that case further decided that the City was "simply a collecting agent," and that the public schools "was decidedly a State institution, under the exclusive control and management of the superintendent and Board of Directors." 38 A., 286; *Labatt vs. New Orleans.*

In the case of *Fisher vs. School Directors,* the very same judgment we are attempting to collect, 44 A., 186, the State Court decided: "That the School Board was an independent authority organized under a separate act of incorporation vesting them with distinct functions, *free from all other local government.* The schools were not city schools, but schools established by the State to instruct the children in the several parishes." "* * * * * The statute required an estimate of *debts and expenditures* by this board in October, each year, which was submitted to the City Council.

"The latter complied with the requirements, and during the years 1874, 1875 and 1876 the sum of $844,677.16 was collected for the schools and there was deposited in the hands of the School Treasurer an amount of cash and certificates which more than balanced the said amount collected."

44 A., 186; *Fisher vs. School Directors.*

Instead of following the precedent established in these two decisions, the Court now says that the City had the power to control the expenses of the School Board and the latter was bound *"not to exceed the amount allowed by the Council's budget."* (R. 132.)

We find that under Act No. 73 of 1872, Section 14, the Council was forbidden from making an appropriation in its budget for schools:

See p. 55 for Act No. 73 of 1872.

"*Be it further enacted, etc.*, That within the months of November and December, 1872, and annually thereafter, the Council sha,l adopt estimates of *receipts and expenditures* (the latter, including police AND EXCLUDING SCHOOLS) for the ensuing year. The estimate of expenditures shall not be finally adopted until one week shall have elapsed after final adoption of the estimate of revenues, and it shall not exceed the same." (1872 No. 73, Sec. 14.)

By comparing Section 4 of the Act of 1873 No. 36 with Section 14 of the above act, your Honors will notice that the School Board was directed "*to adopt an estimate of debt and expenditures* only for the year 1873 and thereafter, during the month of October in each year" to be communicated to the Council of the City of New Orleans, whereas the Council was directed to adopt a budget of *receipts* as well as of *expenditures.*

These two sections construed together, mean that the City must levy a school tax sufficient to meet the estimate of expenditures adopted by the School Board. There can be no escape from this conclusion.

Moreover the second paragraph of Section 15 of the Act of 1872, places no limitation on school taxes to be levied by the Council:

"*Be it enacted, etc.*, The Council after the adoption of the estimate, shall proceed to levy the annual taxes required, to-wit:

"*First:* The City debt tax * * *

"*Second:* A tax for current city expenses, including police and *exclusive of* interest and *schools.* This tax shall in no year exceed one and one-quarter per cent upon the assessed value of real, personal and mixed property."

Section 4 of the Act of 1873, No. 36 provides that the taxes to be levied for school purposes shall not be less than one-quarter of one per cent, but must be sufficient "for the support of the Public Schools."

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It results from the foregoing, that all the contracts entered into by the School Board, held by relators, are valid contracts, having been made within the estimates and are to be paid by school taxes which could be levied by the City Council without any restriction as to rate.

This want of limitation of the tax formed part of the contracts entered into between relators and the School Board, and the subsequent repeal of the Act of 1873, by the Act of 1888 No. 81 and the subsequent limitation of taxation contained in Article 232 of the Constitution of 1898 are null and void, because they impaired the obligations arising from these contracts.

Fourth. The School Board expended $158,547.20 less than their estimates, from 1874 to 1878:

For 1874 the estimate furnished to the City Council, was	456,100 (R. 75)
For 1875 the estimate furnished to the City Council, was	486,500 (R. 77)
For 1876 the estimate furnished to the City Council, was	408,820 (R. 79)
For 1877 the estimate furnished to the City Council, was	408,600 (R. 82)
For 1878 the estimate furnished to the City Council, was	303,688 (R. 83)
Making a total of	2,063,708
For 1874 the expenditures were...	477,114.02 (R. 74-75)
For 1875 the expenditures were...	460,929.70 (R. 77)
For 1876 the expenditures were...	404,478.89 (R. 79)
For 1877 the expenditures were...	264,706.00 (R. 82)
For 1878 the expenditures were...	297,932.19 (R. 83)
Making a total of	1,905,160.80
The School Board, therefore, during these years expended less than their estimates, by	158,547.20
	2,063,708.00

Therefore, Section 10 of Act No. 36 of 1873 cannot be made applicable to the claims of relators, because the School Board did not "make contracts or debts for any year greater than the amount of the revenue provided for according to this act."

If the rights of the parties were to be guided by years, instead of as a whole, your Honors will find that for every year except 1874, the School Board incurred an expenditure within its estimate of "expenses."

The expenditures for 1874 amounted to.....		$477,114.02
Whilst the estimate was.....		456,100.00
Thus exceeding the estimate by.....		$21,014.02
From this, however, should be deducted.....		7,200.84
by reason of the purchase of school certificates made by the Treasurer under instructions from the School Board of.....	$10,371.68	
for which, was paid the sum of ..	3,170.84	
	$7,200.84	
Leaving a net overdraft of..... (R. 74)		$13,813.18
But looking over the different items of expenditures during the year 1874, made by the School Board, we find one item: *repairing buildings* (R. 75).....		9,963.80
		$3,849.38

This is an item which the City Council was ordered to expend out of its own alimony as may be seen by Section 3 of the Act of 1873, No. 36, page 73:

> "That it shall be the duty of the City of New Orleans to keep in good repair, through the proper department, all school houses, fences, grounds and appartment buildings belonging to the City, and the Council shall see the proper carrying out of this requirement, and make due provision therefor *in the budget of current city expenses, as a part thereof.*"

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So that the total expenditures over the estimates for 1874 is only $3,849.38.

To this amount, as compared with the $2,063,708.00 of estimates, we can well apply the maximum *"de minimis lex non curat."*

Fifth. But as we have said, the Supreme Court decided that the Act of 1880 No. 49 "had the effect of creating one fund for school indebtedness prior to said year" (1879) 44 A., 187; *Fisher vs. School Directors.* Thus placing the whole of the indebtedness beyond dispute and within $158,547.20 of the amount the School Board might have incurred.

In fact, most of the judgments rendered against the School Board are made payable out of the taxes levied by the City of New Orleans prior to 1879. (R. 29, 30, 32, 33, 34, 37, 39, 97, 99, 100, 101, 104.)

Some of the judgments are absolute. (R. 27, 32, 33.)

This places this small amount of overdraft beyond dispute and within $158,547.20 of what it might have been.

Sixth. But there is another reason why this overdraft of $3,849.38 should not be stricken with nullity, and it is this:

In the year 1880, Act No. 49 was passed by the Legislature, authorizing the City of New Orleans to receive in payment of back taxes, the school certificates issued by the School Board. In conformity with this law, the City of New Orleans enacted Ordinance No. 6438, Administration Series. (R. 53.)

By the terms of said ordinance, the school tax was made payable in school certificates. In accordance with this ordinance, the City received the full face value of school certificates for the year 1874 to the amount of $31,141.89. (R. 74.)

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If the City is now attempting to have the overissue of 1874 declared null, she is estopped from so doing, because she retired $31,141.89 of 1874 at the face thereof. (R. 74.)

The rule of equity applicable to a case where the fund is not sufficient to pay all the creditors of equal rank in full, is that they should be paid *pro rata*. Equality is equity.

If the total indebtedness of the School Board is to be treated as a whole, then the City is found to have retired $69,991.99 without exacting a *pro rata*. How can she claim the nullity of any part of the overdraft ?)R. 74.)

Were it otherwise, the question would be: which one of the relators should suffer the loss ? Why should the relator or relators be partially paid, when others have been paid in full ?

Seventh. In construing the validity of the contracts held by relators, your Honors must examine what were the powers and right of the School Board to enter into these contracts. Therefore, all the questions here discussed are pertinent to the issue and come directly within the jurisdiction of this Honorable Court.

The facts presented by this record contradict in every particular the conclusions reached by the Louisiana Supreme Court. It was not the duty of the School Board to be guided by the appropriations made by the City Council in her budget, inasmuch as she was expressly prohibited by the law from making any budget for schools. Her duty was simply to levy, collect and pay over the tax to meet the estimates furnished by the School Board. Section 14 of the Act of 1872 No. 73 is clear and explicit to that effect, and the decision in the Labatt case affirms that conclusion.

We have shown that under Sections 2, 3 and 4 of Act No. 36 of 1873, it was the duty of the School Board *"to adopt an estimate of debt"* only, which was to be transmitted in the month of

See p. 55 for Act No. 73 of 1872.

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October, to the City Council. It was then made the duty of the City Council "to proceed to make provision for the support of the Public Schools" in addition to the repairs to the School Buildings which should be made out of the regular alimony of the City's revenues. The City was required to levy a tax to meet the estimates of the School Board. That tax was to be not less than one-quarter of one per cent. If this levy should be more than the estimates, the tax could not be less, under the terms of the statute. If the tax did not cover the estimates, then it was to be increased to a sufficient amount to cover the estimates.

In construing the terms of this statute, the Supreme Court of Louisiana, in a previous decision said that *"the City Council was* REQUIRED *to levy the tax necessary to cover the estimate."* 38 A., 286; *Labatt vs. New Orleans.*

Instead of following the principles laid down in the above case, the Louisiana Court decided that the School Board was bound by the appropriation made by the City Council in their budget, when, as a matter of fact, the law prohibited the Council from including the schools in their budget.

The result of this decision, if maintained, is to practically annull the claims of relators as well as the judgments obtained by them against the School Board; all of which is beyond the power of the Court to do, impairs the obligations of their contracts and is contrary to good conscience and repugnant to the normal sense of justice and equity.

Eighth. The School Board was authorized to employ the teachers at a yearly salary, under a sort of civil service, provided by law; and they are not included in the warning that they must lose their claims, if the School Board exceeds its revenues.

But, supposing that they are bound by the conditional nullity imposed on their contracts, this conditional nullity was of

legislative creation. What the Legislature has done, it could undo.

The services were rendered, they were valuable, and the Legislature had the right and the power, in fact, was in duty bound to repeal this obnoxious law, which if valid might deprive the laborer of his just compensation, without his fault.

This the Legislature of 1880 did. Act No. 74 of 1880, being an act to authorize the City of New Orleans to fund its floating debt, etc., provides, in Section 3:

> "That said bonds may be issued to take up the unbonded valid indebtedness of said City of New Orleans *and the unpaid salaries of school teachers and expenses of maintaining the public schools created since 1872 and prior to January 1, 1880.*" 1880, page 84, Sec. 4.

This was a recognition of the validity of the school indebtedness and bound the City of New Orleans for its full amount.

This act is a perpetual bar to the unconscionable plea set up in this case and approved by the Louisiana Supreme Court; that, because the School Board was supposed to have exceeded its *revenues* (which it did not do) the parties contracting with it should lose and forfeit their just claims. Therefore, the claims of relators which have been reduced to judgments, since the passage of the above act, forever silenced the defence that the School Board could deprive the relators of their property without their fault and contrary to their will, and after the services had been rendered by simply exceeding its revenues.

Ninth. Again in 1894, the Legislature enacted Act 136, entitled: "An Act to provide for the payment of the salaries and expenses of the Public Schools of the City of New Orleans."

This act provides for a registry of the judgments, rendered against the School Board, whether the same be absolute or payable out of the school taxes levied by the City of New Orleans

See p. 63 for Act No. 74 of 1880.
See p. 74 for Act No. 136 of 1894.

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to be recorded with the Board of Liquidation and orders the Board after paying a certain amount each year to the School Board with the surplus, to liquidate the judgments in the order of their registry.

This act was declared unconstitutional by the Supreme Court of Louisiana because the funds out of which the judgments were to be paid were already dedicated by the constitutional amendment of 1890. (See Act 110 of 1890, No. 110.) 48 A., 1078; *Fisher vs. School Board.*

Although the act failed, because it was supposed to divert the funds from its constitutional dedication, it was nevertheless, a recognition by the Legislature of the validity of the claims and judgments held by relators.

Therefore, we find:

First: That the defences set out by the Mayor and Council of New Orleans, when condensed are to the following effect:

Second: That the City of New Orleans levied one-quarter of one per cent for school purposes for 1873 to 1878, inclusive, but failed to collect $150,451.89 of that levy; that the creditors of the School Board who contracted on the faith of the levy and collection of the School tax, have the right to exact from the City, the payment in full of the amount so levied and not collected.

That the repeal of the law directing said levy can have no effect on the rights of these creditors, because the repeal impaired the obligations of their contracts.

That, therefore the power of the Council to levy and collect that tax remains in full force and effect until the satisfaction of the claims of these contract creditors.

Third: That the City Council was only a collecting agent, for the School Board, with the "required" duty to levy, collect

and turn over to the School Board a tax sufficient to pay the estimate of expenditures furnished to the City, by the School Board, with a prohibition from adopting a budget of expenditures for school purposes.

Fourth: That the estimate, of the expenses furnished by the School Board was the measure by which their expenses had to be governed and all contracts involved in these proceedings having been made by the School Board, within their estimate of expenditures, are valid contracts, not affected by the conditional nullity provided for in Section 10 of Act 36 of 1873.

Fifth: That the whole of the indebtedness of the School Board, constitutes but one fund, and could have legally been, $158,547.30 more than it actually was. This amount being the margin left after deducting all the indebtedness incurred from the estimates furnished to the City.

Sixth: The City having retired $69,991.99 of school certificates at their face value, is not now in a condition to claim that any part of the outstanding indebtedness exceeded the limit and is null. This position should have been assumed previously and a *pro rata* distribution called for, between all the creditors, they being of equal rank. Equality is equity. The City is now estopped.

Seventh: The judgments obtained by relators against the School Board which liquidated and forever settled the indebtedness and which are now final and conclusive, are practically annulled by the present decision.

Eighth: The conditional nullity attached to the contracts made by the School Board, is of legislative creation and has been undone by the Legislature; as may be seen by Act 74 of 1880, recognizing the total indebtedness of the School Board as valid and ordering the City of New Orleans to issue her bonds for the same.

See p. 63 for Act No. 74 of 1880.

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Ninth: The Legislature of 1894, recognized the validity of the judgments obtained by relators, and although the act failed to reach the funds designated, the recognition remains in full force.

IV

First: The Supreme Court of Louisiana seems to have laid great stress on the length of time which relators allowed to elapse before filing this application for a mandamus. The Court said:

> "A creditor, having remained *inactive and permitted a number of years to elapse*, cannot demand a levy of taxes and by a writ of mandamus obtain an order to compel its levy." (R. 131.)

In another part of the opinion, the learned Court say:

> "But above all, whatever right there might have been should have been urged in due time." (R. 132.)
>
> "It does not appear that the School Board ever objected or any of the creditors at the time, to the amount levied." (R. 132.)

This objection necessitates a review of the steps taken by the relators to collect their claims. Your Honors will perceive that far from being *inactive*, for a number of years; they were in *constant* and *active* litigation to enforce payment from the City. You will also perceive that it was from the nature of things *impossible* to have applied sooner for the levy of the tax before knowing the amount of deficit and without being met with the exception or plea of prematurity. No less than ten decisions have been rendered by the highest courts, both State and Federal, including one by this Honorable Court during the delay complained of. The relators were the plaintiffs in all. This case is the second presentation to this Court, of relators' claim for relief.

The first presentation of the Teachers' claims, was made against the City in the case of *Labatt vs. New Orleans*, before

the Louisiana Supreme Court and is reported in the 38 A, page 284. This decision was rendered in 1886.

The second attempt was made to the State Court and resulted in a judgment recognizing their claims rendered by the Supreme Court in 1892. 44 A., 184; *Fisher vs. School Board.*

When these claims were brought to the attention of the State Court the third time, the plea of prescription was urged, and overruled by the Supreme Court. This decision was rendered in 1893. See 45 A., 342; *Gasquet vs. Schools.*

So that in 1893, it was conclusively decided that the claims or certificates were not prescribed and they were then merged in a judgment, which is still in force.

In 1894 by Act No. 136, the validity of the judgments was recognized by the Legislature and Mrs. Fisher brought a suit against the City and Board of Liquidation of the City Debt to enforce the execution of the act. The judgment was favorable to the City. 48 A., 1077; *Fisher vs. Schools, etc.* This decision was rendered in 1896.

In 1893, Mrs. Fisher having recovered a judgment in the United States Circuit Court, sued out a mandamus to fund her judgment under the funding Acts of 1880 No. 74 and 1884 No. 67 and 1890 No. 110. The judgment was against her contention and is reported in 56 Fed. Rep., page 49. *U. S. ex rel., Fisher vs. Board of Liquidation.*

This was in 1893.

She then took a writ of error to the Circuit Court of Appeals and this judgment was affirmed. 60 Fed. Rep., 387. *U. S. ex rel., Fisher vs. Board of Liquidation.*

This was in January 1894.

Another attempt was made in 1896, to obtain payment from the Board of Liquidation, under Act 1894 No. 136. This at-

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tempt again failed, as appears by the decision rendered by the Circuit Court of Appeals which is reported in 75 Fed. Rep., 543. *United States ex rel., Fisher vs. Board of Liquidation.*

Relators having come to the conclusion that they could obtain no relief except under the original law authorizing their employment in 1896, soon after the rendition of the last judgment filed their bill for an account of the school taxes collected by the City. Having obtained judgment in the Circuit Court, the City appealed, and in 1899 the Circuit Court of Appeals rendered judgment against the City in the sum of $71,131.60 with five per cent interest from January 24, 1881 and on the sum of $799.18 from May 8th, 1897. The principal and interest of said judgment amounted to about $150,000.00. This case is reported in 91 Fed. Rep., page 574. (R. 107.)

A writ of certiorari was issued by this Honorable Court and the judgment in principal was affirmed but the interest was reduced so as to commence May 11th, 1896. 180 U. S., 185; *New Orleans vs. Fisher.*

This judgment was rendered in 1901.

It required some time to realize the funds. A writ of mandamus being necessary to compel the Board of Liquidation to pay the last judgment. This case is reported in the 106 Fed. Rep., 985; *Board of Liquidation vs. U. S. ex rel., Fisher.*

The distribution of the fund took some time also.

This suit for a mandamus was filed April 30, 1907. We find that the Supreme Court of Louisiana has decided that six years is not a sufficient delay to apply for the levy of an additional tax to pay a judgment and that the taxes already levied must be realized on before an additional tax can be demanded. 31 A., 709; *Duperier vs. Iberia.*

As a matter of common sense, no creditor has a right to demand the levy of an additional tax, until the first levy has been exhausted *and accounted for.*

In the case now under review, the judgment of the Circuit Court of Appeals amounted to more than $150,000.00. Had it not been reduced by this Honorable Court to about $91,000.00 the demand of the relators would now be much less than it is. It is impossible to fix the deficiency until the first levy had been fully accounted for and the deficiency ascertained and collection exhausted. This was only ascertained in 1901.

In the face of all these facts, and of the constant litigation of these parties, and of the fact that a full account of the taxes had never been given until about five or six years before the institution of these proceedings, how can the Supreme Court of Louisiana accuse these relators of *"having remained inactive* and of permitting a number of years to elapse before making their demand; and that their rights were not urged in due time?"

Relators are certainly not guilty of laches.

Second: The Supreme Court, in the Gasquet case, 45 A, 343, found that none of the certificates were prescribed:

"Act 36 of 1873, makes it very clear that the claims evidenced by these certificates were not payable absolutely or at any particular time. They are payable only out of the revenues of the years for which they are issued, and only when said revenues are collected and in the manner therein provided; and the act further declared that 'no writ of fi-fa or mandamus shall lie for the seizure of any school moneys or to direct or enforce its paying out otherwise than in the manner and sequence required in this act.'

"This law formed a part of the contracts out of which the claims arose, and deprived the claimants of any legal remedy to enforce payment except out of particular revenues, when actually collected and covered in the treasury.

"The case is very much stronger and clearer than that of *King Bridge Co. vs. Oboe Co.*, 124 U. S., 459 in which the Supreme

Court of the United States held that County warrants, payable only when there are funds in the treasury applicable thereto, are not actionable until the money for its payment is collected and therefore, not subject to the statute of limitations except from the same time. * * *

"There is nothing to suggest that plaintiff or his authors have '*slept upon their rights.*' If they had it would have been easy for defendant to prove it." 45 A., 343; *Gasquet vs. Schools.*

This was decided in 1893. Twenty years nearly after the certificates had been issued.

If the certificates held by relators are not prescribed, if the judgments into which these certificates have been merged are not prescribed, and, on the contrary, are in full force and effect, why should the remedy to enforce and collect them be prescribed?

This Honorable Court has decided that "while the coupons are merged in the judgment, they carried with them into the judgment all the remedies which in law formed a part of their contract obligations, *and these remedies may still be enforced* in all appropriate ways notwithstanding the change in the form of the debt." 105 U. S., 735; *Ralls County vs. United States.*

The statement that we have lost our remedy by the lapse of time is not only contrary to the facts, but is in direct opposition to the decision of the Louisiana Supreme Court in the Gasquet case and to the rulings of this Court.?

> "A mandamus is 'in the nature of an execution; the only defences that can be considered are those which may be presented in the proper course of judicial procedure (105 U. S., 734) not outside of or beyond the judgment sought to be executed."
>
> 6 Wall, 198; *Riggs vs. Johnson.*
> 97 U. S., 300; *Memphis vs. Brown.*
> 200 U. S., 248; *Graham vs. Folsom.*
> 132 U. S., 214; *Chanute City vs. Trader.*
> 122 U. S., 318; *Harshman vs. Knox Co.*

Quoting 6 Wall, 166; 9 Wal', 415; 103 U. S., 480 to 484. 102 U. S., 195; *County of Greene vs. Daniel.*

V

Is the corporation, the City of New Orleans, the same today as the one which was directed to levy the school tax in 1873?

This question was answered in the negative by the Louisiana Supreme Court. They say:

> "In the case here, property has changed hands. Other owners would have to pay the amount. They acquired this property free from all claims. To turn back the hand of time and compel present owners to pay a tax of a remote past, has every appearance of the inequitable and unjust. There should be a limit; 'each year,' said the Court in the first cited case, *infra*, 'the property ought to bear its annual burden, but if a ruinous accumulation of unlevied taxes can be passed upon it at the mere caprice of a creditor who was silent, when he should have spoken, what safety can a man have in his possessions?' "
>
> "*Martin vs. Kirk et al;* Fed. Rep. 72, page 290.
>
> See also *True vs. Melin*, 43 N. H., 503.
>
> *Savannah vs. Georgia*, 4 Ga. (R. 131)"
>
> "In the respects that the City Council of New Orleans failed to do its duty in the early seventies (if it did fail) the present Council and those whom it represents is not to be made to answer therefor in the defense of a proceeding by mandamus." (R. 131.)
>
> "* * * * We are decidedly of opinion that the City is not bound to make good an omission, negligence or dereliction (if there were such on the part of the Council of many years ago). Debts and liabilities should always be discharged if at all possible but by those who are liable therefor." (R. 132-133.)

The change of property holders and of the residents of a city is exactly what takes place in a corporation, according to the definition contained in the Civil Code of Louisiana:

> "A corporation is an intellectual body, created by law, composed of individuals, united under a common name,

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the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals which compose it, and which, for certain purposes, is considered as a natural person. C. C. 427.

"Corporations are of two principal kinds: political and private.

"Political corporations are those which have principally for their object the administration of a portion of the State, and to whom a part of the powers of government is delegated to that effect. All others are private corporations." C. C. 429.

Chief Justice Marshall defined a corporation in the Dartmouth case, to be an artificial being, invisible, intangible and existing only in contemplation of law. 4 Wheat., 518; *Dartmouth College vs. Woodward.*

This Court defines an incorporated company as "an association of individuals, acting as a single person and by their corporate name." 137 *U. S. vs. Trinidad Coal Co.*

That a corporation has a distinct existence from its corporators need not be further explained, because it is one of these matters which is an axiom in law.

A municipal corporation is a part of the State government. A certain portion of the territory is carved out by the Legislature and turned over to the municipality, to be governed by itself, in accordance with the rules fixed by its charter. This Court has on many occasions decided that where the charter of a municipal corporation is repealed by the Legislature and another corporation is created, practically over the same territory, that to all intents and purposes the corporation is the same. *Mobile vs. Watson*, 116 U. S., 300.

In fact the indebtedness is due by the people as an entity, and not by any particular individual composing the mass. This fact seems to have been ignored by the Louisiana Supreme Court when they decided that:

"The City is not bound to make good an omission, negligence or dereliction (if there were such on the part of the Council of many years ago)."

As to the matter of injustice of these proceedings, the question remains, which does the greatest injustice: to forfeit the salary of the school teachers who taught the children of this locality and let them remain unpaid for their valuable services; or make those very same children who have become men and property owners at this time, pay for the education which they have received?

The revenues of each year should pay the indebtedness of that year, but when the chief executive of a municipality is antagonistic to the fulfillment of the obligations due by the corporators and releases them from the performance of their duty and payment of their taxes, as Mayor Charles J. Leeds did in 1875 and in 1876 (R. 45 to 49), where is the injustice and inequity of these proceedings?

In the present instance the Louisiana Court decided that all of these taxes constitutes but one fund out of which the claims of relators can be paid. This decision has the force of the thing adjudged between these parties. Therefore, the questions of revenues of each year, applicable to the indebtedness of the year has been eliminated from this cause.

VI.

Act 5 of the Extra Session of 1870, Does Not Apply to this Cause.

Act 5 of the extra session of 1870, has no application to this cause:

1. Because the title of the act is to prescribe *"the mode of satisfying judgments for money against the City of New Orleans."* 1870, E. S., page 10.

See p. 52 for Act 5, Extra Session of 1870.

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2. Because the first section of the act is directed against the issuance of a mandamus, "the object of which shall be, either directly or indirectly to obtain or compel the Comptroller or deputy Comptroller, or auditing officer, to issue and deliver any order or warrant for the payment of money, or against the Treasurer, assistant Treasurer, or any officer or officers charged with the disbursement of the moneys of the City of New Orleans, the object of which shall be either directly or indirectly *to enforce the payment of money claimed to be due from the City of New Orleans.* * * *"

The judgments sought to be enforced in the present instance are against the School Board and are made payable out of the school taxes levied by the City of New Orleans.

This point has been passed upon in the litigation between Mrs. Fisher and the City of New Orleans, where it has been finally decided that although the judgments were directed against the revenues of particular years, they were not judgments against the City of New Orleans and could not be funded. 56 Fed. Rep., 49; U. S. *ex rel., Fisher vs. School Board.* 60 Fed. Rep., 387; U. S. *ex rel., Fisher vs. School Board.*

It is hardly necessary to discuss this point, because the Louisiana Supreme Court did not base its judgment on the want of its authority under that act to issue the mandamus. They said:

> "The first proposition of relator is that mandamus is the proper remedy.
>
> "In answer to this contention, respondent urged in the answer that under act 5 of 1870, Extra Session, plaintiff is not entitled to the action instituted.
>
> "Recently a somewhat similar point was raised. It was decided in *ex rel. Douglas vs. Kennedy, Comptroller,* No. 16992, not yet reported. We will here state that the law construed in the decision just cited was enacted before the date of the alleged contract in the case now before us, for decision. In the Douglas case just cited, the relator

had earned the amount which he sought to collect. He brought suit in time. The Court held that the act before referred to was imperative in terms and that he, Douglas, would have to resort to other steps than by mandamus to recover the amount claimed."

"We only refer in passing to the decision above cited. There are other points of the case, if anything more decisive and for that reason we take them up for decision, *and rest our conclusion upon the latter* as sustained by authority hereafter cited." (R. 131.)

Having abandoned this point, Your Honors are not called upon to revise this ruling. Were it otherwise, you will find that the case of Douglas referred to, is covered by the terms of Act 5 of 1870 Extra Session.

The full text of *State ex rel., Douglas vs. Kennedy* is reported in the 121 La., page 758.

Justice Land, as the organ of the Court, said:

"This is a mandamus proceeding to compel the City Comptroller to warrant for, and the City Treasurer to pay certain paving certificates issued pursuant to a contract between the relator and the City of New Orleans." 121 La., 758.

The present case is directed against the corporation to compel them to perform a duty in which they have no discretion. No such case is provided for, by the act of 1870.

To Recapitulate.

1. The first matter which this Honorable Court will perceive in this case, is the fact that relators are claiming that they are judgment creditors of the School Board, to enforce obligations arising from conventional contracts entered into between the School Board and the relators; that said contracts were to be paid exclusively by taxation levied by the City of New Orleans; that the contracts were entered into by virtue of Act

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No. 36 of 1873, which authorized the School Board to enter into same and made them payable out of taxes levied by the City of New Orleans. That the Act of 1873 was repealed by the Act of 1888 No. 81, which impaired the obligations of their contract and left relators without any remedy. That the highest Court of the State decided their contention adversely to them. The case is then, properly brought to this Honorable Court for review. The writ of error was granted by the Chief Justice of the Supreme Court of Louisiana.

2. As a part of the facts of this case, it appears that these same relators, after obtaining their final judgment against the School Board, filed in due time a bill of complaint against the City of New Orleans, and obtained an accounting of the school taxes collected by the City of New Orleans and not paid over.

The account having been ordered, the complainants recovered judgment against the City of New Orleans for the school taxes collected by the City, in the sum of $71,938.78, with five per cent interest per annum from the date of the filing of their bill of complaint. This is the judgment rendered by this Honorable Court in the case of *City of New Orleans vs. John Fisher, Tutor*, No. 28 of the October Term of 1899. (original No. 17,391.)

The judgment rendered by the Circuit Court of Appeals, for the Fifth Circuit was for a like sum in principal, with five per cent from January 24, 1881, aggregating an amount exceeding by more than fifty thousand dollars, the amount allowed by this Court. The complainants were compelled subsequently to sue out a writ of mandamus to collect their judgment.

It was late in 1901, when the funds were realized and paid over by the City of New Orleans to the complainants, who are now the relators in these proceedings.

It is evident from this statement of facts, that no demand for the levy of an additional tax to pay the judgments of relators

could legally have been made until the account of the taxes already levied had been rendered and paid over.

It is beyond contradiction that the first levy of the school tax had to be exhausted and the amount of deficit ascertained before an additional levy could be demanded by relators.

Relators were not, therefore, in a legal position to demand the levy of an additional tax until 1901.

The petition for a mandamus to levy an additional tax was filed April 30, 1907. In what possible manner can the relators be charged by the Supreme Court of Louisiana with laches, under these circumstances?

From all that has been said, the School Board had the right and power to contract debts under any circumstance, within the one-quarter of one per cent school tax levied by the City, and relators, whose contracts are made payable out of the levy of that tax have always been and are now entitled to the collection of the full amount of said tax and can claim that the City make good the deficit of $150,451.89 not collected, notwithstanding the repeal of Act No. 36 of 1873 under which the levy was made.

3. The reasons given by the Mayor and Council, why the mandamus should not issue in this case, are all based on the erroneous idea that the School Board was bound, in making its estimates of expenditures and debts, to limit the expenditures within the appropriations of the City Council.

We find as a matter of fact that the estimates of expenditures were to be furnished by the School Board to the City Council, in the month of October and that the Council had to adopt the estimates of receipts and expenditures and levy its taxes in the months of November and December.

Therefore it was physically impossible for the School Board to be guided by the City's estimates made one or two months

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later than its own. (See Acts of 1872 No. 73, Section 14 and Act No. 36 of 1873, Sections 2, 3 and 4.)

4. We find further that the School Board could not be bound by the appropriations of the City Council in their "budget" inasmuch as Section 14 of said act of 1872 No. 73 expressly prohibited the City from making an appropriation in their budget for schools:

> "That within the months of November and December, 1872 and annually thereafter, the Council of New Orleans shall adopt estimates of receipts and expenditures (the latter including Police *and excluding schools*) for the ensuing year." 1872 No. 73, Section 14. (Copied in the Appendix.) P. 55.

We find that the City was *required*, under the Act of 1873 as construed by the Louisiana Supreme Court in the Labatt case, to levy a tax sufficient to meet the estimate of the School Board. That the School Board was an independent institution, and that the City was only a collecting agent, as previously found by the Louisiana Court.

5. It is admitted by the Louisiana Supreme Court as a part of the facts established by the Record that the estimates of the School Board for the years 1874 to 1877, inclusive, amounted to $2,063,708 and that the tax levied amounted for these years only to $1,364,855.45. Relators have admitted that the City was entitled to a credit of the amount to be paid by the State $335,039.96; adding this amount to the tax levy made by the City, we find a total credit of $1,699,895.41.

Deducting this amount from the $2,063,708 of estimates of the School Board, we find that the City should have levied an additional amount of $363,812.59 (R. 130.) $363,812.59

Now if we add to this amount not levied by the City and which she was called upon and "required" to levy, the deficit for the non-collection of the tax which she did levy, say, the sum of..... 150,451.89

We find that the City is bound for the sum of five hundred and fourteen thousand two $514,264.48

hundred and sixty-four 48 100 dollars if she is made to comply with her full duty in the premises.

We find that the total indebtedness of the School Board for these years, unpaid, is $311,052.46. (R. 85 and 86.)

From this amount we should deduct the sum of $71,938.78, which was recovered from the City in the Fisher case decided by this Court, 180 U. S. 185, leaving due $239,113.68.

Therefore, if the proper amount of school taxes had been levied the indebtedness of the School Board would have been paid in full leaving a large surplus.

6. It has been decided by the Louisiana Supreme Court in the case of *Gasquet vs. the School Board*, that the certificates sued upon are not prescribed and "there is nothing to suggest that the plaintiff or his authors have slept on their rights." If the certificates are not prescribed and the judgments into which they have been merged are in full force, why should the remedy to enforce the judgments have been lost?

Relators do not find it necessary or profitable to enter further into the ramifications of details contained in the Record and they feel satisfied that they have made out a case which cannot be overthrown by any fact, law or reason which can be advanced by the Mayor and Council of New Orleans; they therefore sub mit their cause, praying that the judgment now under review, be reversed and that this cause be remanded to the Supreme Court of Louisiana with instructions to issue the mandamus prayed for. Relators further pray for costs and will feel grateful for the justice done in the premises.

Respectfully submitted,

CHAS. LOUQUE,

New Orleans, August 6, 1910. *Of Counsel.*

APPENDIX

Acts of Louisiana, 1870.
Extra Session.

No. 5.

To limit and restrict the power of courts to issue orders or writs of mandamus and fieri facias against the City of New Orleans and the officers thereof, and to declare the effect and prescribe the mode of satisfying judgments for money against the City of New Orleans.

SECTION 1. BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF LOUISIANA IN GENERAL ASSEMBLY CONVENED,

That from and after the passage of this Act, no Court within the State shall have authority or jurisdiction to allow, order, hear, entertain or enforce any summary process or proceeding, or writ, or order of mandamus, or any order or proceeding in the nature of an order or writ of mandamus, either against the Comptroller, Deputy Comptroller, or any auditing officer of the City of New Orleans, the object of which shall be, either directly or indirectly, to obtain or compel said Comptroller or Deputy Comptroller, or auditing officer, to issue and deliver any order or warrant for payment of money, or against the Treasurer, Assistant Treasurer, or any officer or officers charged with the disbursement of the moneys of the City of New Orleans, the object of which shall be, either directly or indirectly to enforce the payment of money claimed to be due from the City of New Orleans to any person, persons, corporation or corporations whatsoever, but all actions or proceedings for the recovery of any sum of money

claimed to be owing by the City of New Orleans shall be in the ordinary form of action, instituted against the City of New Orleans as a corporation, and not against any branch, department of officer thereof, and shall, in all respects, be conducted in the same manner as other ordinary actions.

SEC. 2. Be it further enacted, etc., That hereafter no writ of execution or fieri facias shall issue from any of the courts in this State against the City of New Orleans to enforce the payment of any judgment for money against the City of New Orleans, but final judgment against the City of New Orleans, condemning said corporation to pay any sum in money, when the same shall become executory shall have the effect in law of establishing and fixing the amount of the plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of the said judgment, together with a copy of the plaintiff's petition and the defendant's answer in the cause in which such judgment is rendered, together with the certificate of the clerk of said court that such judgment is final and executory, to be filed in the office of the Comptroller of said city, and it shall be the duty of the Comptroller or auditing officer of said corporation to receive the same and cause the same to be registered in his office of the date on which the same shall have been presented, and when so registered it shall be the duty of the Comptroller to warrant on the Treasurer or disbursing officer of the corporation for the amount due thereon without any special appropriation of money therefor by the Common Council; provided, always, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure required to be made by the one hundred and twenty fourth section of the act of the Legislature, entitled an act to amend an act entitled, "An Act to Consolidate the City of New Orleans and to Provide for the Government of the City of New Orleans and the Administration of the Affairs thereof," approved March twenty, eighteen hundred and fifty-six, or such laws as may be hereafter enacted relating thereto.

SEC. 3. *Be it further enacted, etc., That* in case the amount of money designated in the annual budget for the payment of judgments against the City of New Orleans at the date when any judgments against the said corporation

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shall have been final and exeeutory shall have been final and executorv shall have been exhausted, the Common Council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Common Council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the Comptroller from the first money next annually set apart for that purpose.

SEC. 4. *Be it further enacted, etc., That* if, by reason of the failure of the Comptroller or the auditing officer of the City of New Orleans, or of the Treasurer or disbursing officer of said corporation to perform his duty, or if, by reason of the neglect or malfeasance of them, or either of them, any person, persons, corporation or corporations, shall be unjustly delayed in the payment of any judgment or demand against the City of New Orleans, or shall not be paid in their due and regular order in which such demands are entitled to be paid, and shall be prejudiced and suffer loss and damage thereby, or by reason of any unjust preference to other creditors, such person, persons, corporation or corporations so injured by the act of either of said officers, shall have a right of action against such officer or officers individually, by whose act or acts he or they have suffered loss and damage, and against the surety or sureties on the official bond of such officer, and may recover damages therefor against said officer and sureties for such amount as they may establish on the trial of such cause.

SEC. 5. *Be it further enacted, etc., That* this act take effect and be in force from and after its passage, and that all acts and parts of acts in conflict with this act be and are hereby repealed, in so far as the same conflict with any of the provisions of this act.

Act No. 73 of 1872, Page 124.

AN ACT

To authorize the Council of the City of New Orleans to levy a police tax; to regulate levies of taxes, the proceedings of tax suits, and the jurisdiction of the district courts for the Parish of Orleans in reference thereto; to define and punish forgery in certain cases; to authorize the funding of the floating debt; to consolidate, limit and provide for the debt of the City of New Orleans, principal and interest; to authorize a tax for the support of the city government, and to establish a fiscal agency, defining its duties, and for the better enforcement of the collection of all taxes.

SECTION 1. Gives the power to the City of New Orleans to levy and assess a police tax, additional to previous levy.

SEC. 2. Relates to assessment rolls.

SEC. 3. Limits the police tax to one-half of one per cent

SEC. 4 *Be it further enacted, etc.,* That said levy be made, any provision of section seven of Act No. 42 of 1871 to the contrary notwithstanding, which is hereby repealed so far as it may conflict with any provision of this act.

SEC. 5 Relates to tax bills to be made out by the Administrator of Public Accounts, etc.

SEC. 6. Relates to time when tax is collectable.

SEC. 7. *Be it further enacted, etc.,* That for the purpose of all city tax suits, whether for police or other purposes, and whether of one hundred dollars or over or under that amount, all or either of the district courts for the Parish of Orleans, excepting the First and Second, are hereby expressly invested with jurisdiction, and justices of the peace are hereby divested of such jurisdiction; *provided,* the Second District Court may entertain jurisdiction of tax suits against successions.

SEC. 8. *Be it further enacted, etc.,* That if at any time any assessment made by or under authority of the Council of the City of New Orleans shall be declared or become void and without effect by reason of non-compliance with any formality or requirement relative to the imposition

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of municipal taxes, then and in that case the Council shall have full authority and power by ordinance or otherwise to make an new assessment thus becoming or being declared null and void and to place the tax bills or certified accounts in court and obtain judgment therefor, after publication for the length of time and in the manner provided for the collection of city taxes. It being the true intent and meaning of this law that the city of New Orleans shall not lose the right to collect annual taxes by reason or on account of any legal informality.

SEC. 9. This relates to money received by the City of New Orleans and receipts signed or countersigned.

SEC. 10. This relates forged or falsely signed bills, etc.

SEC. 11. *Be it further enacted, etc.,* That all taxes due and unsettled at the passage of this act, or hereafter becoming due, are hereby declared to be lien and privilege upon the property assessed for the same, to have the priority over all other liens or privileges. And against all other properties of the delinquent they shall have the force and effect of a lien from the date of their being recorded in the mortgages office as hereinafter provided.

SEC. 12. This relates to the registry of taxes due.

SEC. 13. This relates to unbonded debts; bonds of five hundred and one thousand dollars; exchange of bonds; matured bonds; bonded debt not to exceed twenty-three millions.

SEC. 14. *Be it further enacted, etc.,* That within the months of November and December, 1872, and annually thereafter, the Council shall adopt estimates of receipts and expenditures (*the latter including police and excluding schools*) for the ensuing year. The estimate of expenditures shall not be finally adopted until one week shall have elapsed after final adoption of the estimate of revenues and it shall not exceed the same.

SEC. 15. *Be it further enacted, etc.,* That the Council, after the adoption of the estimate, shall proceed to levy the annual taxes required, towit:

1st. The city debt tax, which shall be based upon the detailed estimate of the sinking funds and interest falling due. For all bonds for which no other retiring provision exists by law, an estimate shall be included, of not less than two or more than ten per cent of the

face of the bonds outstanding of any of the several issues, which shall be applied to the retiring of bonds offered at the most advantageous rates, no bid to be accepted higher than par, and the right reserved to reject all bids. No limit other than herein laid down shall apply to this tax, which is hereby declared a vested right of the bondholders interested.

2nd. A tax for current city expenses, including police and *exclusive of interest and schools.* This tax shall in no year exceed one and a quarter per cent upon the assessed value of real, personal and mixed property.

These taxes shall bear the name of the year in which they shall be collectable, and the assessment upon which they shall be made shall be termed the assessments for the said year.

SEC. 16. *Be it further enacted, etc.,* That no provision in any general law of the State limiting the power of taxation by the several cities, towns, parishes and other corporations, shall be held to apply to any of the taxes of the City of New Orleans, herein or otherwise specially authorized to be levied.

SEC. 17. This relates to Fiscal Agent, etc. Funds, vested right of bondholders. New York Agency.

SEC. 18. *Be it further enacted, etc.,* That all laws or parts of laws in conflict with this act be and the same are hereby repealed, so far as they are in conflict, and this act shall have force and effect from its passage.

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Act No. 36 of 1873, Page 73.

AN ACT.

To provide Additional Regulations for the Board of School Directors of the City of New Orleans; to provide a permanent revenue for said Schools; to prevent litigation against the School Fund; to fund the school debt; to regulate the employment of teachers; and to direct the Council of the City of New Orleans to levy a school tax, and perform other duties in connection with the Public Schools.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the Board of School Directors for the City of New Orleans shall be in future composed of twenty directors, to-wit: One from each representative district, as at present constituted, and one additional director for each municipal district, the Administrator of Finance of the City of New Orleans, who shall be ex officio a member, and the superintendent of the sixth division, who shall be ex officio a member, with the right to speak but not vote in the board. The State Board of Education shall appoint the directors from the municipal districts as soon as practicable after the passage of this act, so that two shall retire annually, the said Board to determine by lot the succession of their retirement. They shall require the said director to possess the qualification of an elector in the City of New Orleans and the necessary fitness and capacity for the office, and each new director, before taking his seat, shall take the oath of office prescribed for State officers.

SEC. 2. *Be it further enacted,* etc., That as soon as practicable after the passage of this act the Board of Directors for the City of New Orleans *shall adopt an estimate of debt and expenditures for the year* 1873, *and thereafter,* during the month (of) October in each year the Board shall in like manner adopt and communicate to the Council of the City of New Orleans an estimate for the year commencing on the first of January next ensuing.

SEC. 3. *Be it further enacted,* etc., That it shall be the duty of the City of New Orleans *to keep in good repair,*

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through the proper department, *all school houses*, fences, grounds and apartment buildings belonging to the city, and the Council shall see the proper carrying out of this requirement, *and make due provision therefor in the budget of current city expenses as a part thereof.*

SEC. 4. *Be it further enacted, etc.,* That the Council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of Public Schools *in addition to those required in Section 3 of this act,* to be made to the preservation of city property. For the purpose of such support *it shall levy a tax of not less than* one-fourth of one per cent on the taxable valuation of all property in the City of New Orleans, and no provision in any general or special law limiting the aggregate power of taxation of the City of New Orleans, or of the Council, shall prevent the levying of at least one-quarter of one per cent per annum for school purpose. The tax herein required to be levied for the year 1873 shall be in addition to the taxes levied by the Council in the month of December, 1872, and collectable therewith.

SEC. 5. *Be it further enacted, etc.,* That the revenues of the school board for its necessary expenses, and the uses and purposes of the public schools, shall be as follows: The proceeds of the tax of twenty-eight cents on the one hundred dollars levied by the Council of the City of New Orleans for 1872, the annual taxes levied in accordance with this act, the pro rata of State school tax distributed according to sections thirty-four and thirty-five of Act No. 6 of extra session of 1870, any donations, bequests, fines or poll tax received for or accruing to the school fund, and such sum or amount as the City Council may appropriate *out of the general funds upon the annual budget, which is hereby authorized, although the same may be raised as a part of the tax for current city expenses;* and such sums, if any, as may be raised upon a vote of the qualified electors authorizing taxation beyond or exceeding the limits laid down by law for taxation not authorized by such election; provided, that appropriations for purchasing landed property or erecting buildings may, at the option of the Council making the same, be expended under its control; and provided further, that property and buildings purchased or erected by the school board shall be the property of the

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City of New Orleans, and only alienable by the consent of the Council, and shall not be subject to seizure for any debt.

SEC. 6. *Be it further enacted, etc.,* That for the purpose of relieving the public schools of the City of New Orleans from the pressure of debt, the Council of the City of New Orleans is hereby directed to issue new consolidated bonds, general series, at the rate for the said bond of ninety cents on the dollar in favor of all holders of warrants of the school board for the debts for the years 1871 and 1872, who may desire and demand the same. On the delivery of such warrants to the Administrator of Public Accounts of the City of New Orleans, he shall issue his warrant on the Administrator of Finance for the delivery of bonds accordingly.

SEC. 7. *Be it further enacted, etc.,* That no warrant or certificate of any kind shall be hereafter receivable for any school tax, but the school taxes shall be payable in cash only; and the Administrator of Finance shall pay out the cash received for the tax of 1872 for the oldest warrants outstanding of 1871 or 1872, so that no warrants of any month shall be paid until those outstanding of previous months are paid or fully provided for, and the cash hereafter received from the State and from other sources, including the school tax of 1873, shall be appropriated for the expenses of each month in turn, beginning January 1st, 1873; and no writ of fieri facias or of mandamus shall lie for the seizure of any school moneys in the fiscal agency or treasury of the city of New Orleans or of the School Board, or to direct or enforce its paying out, otherwise than in the manner and sequence required in this act.

SEC. 8. *Be it further enacted, etc.,* That the teachers and employes of the Board of Directors of the Public Schools of the City of New Orleans shall be appointed by said Board at such a rate of annual salary as may be fixed, and to continue until otherwise ordered by the Board; but no annual salary shall be construed as giving a fixed time of employment; and the Board may at any time vacate any position by notifying the incumbent thereof. But no school officer, director or committee shall be empowered to remove any teacher, and no position or appointment shall be vacated except by the Board at any meeting of

the same. And no suit or action shall lie against the Board of School Directors, or against the school moneys or revenues for the payment of any discharged officer or teacher, the school fund being held sacred for the actual current expenses of the schools. The pay of the regular incumbent, in case of absence from any cause shall be allowed pro rata for actual days employed to the supernumerary or other person temporarily acting. In all suits by or against the Board of Directors of the public schools of the City of New Orleans, or by or against the President of the Board, or the Administrator of Finance of the city, involving the disposition of the moneys raised or to be raised for school purposes, in case the said Board, President or Administrator of Finance shall have occasion to appeal, sue out injunction, or take other proceedings in which ordinary parties would be required to gibe bond and security, such bond and security shall be dispensed with.

SEC. 9. *Be it further enacted, etc.*, That there shall be appointed by the Board of School Directors a committee on teachers, who shall examine applicants for employment as teachers. The superintendent of the sixth division shall be required to attend and assist at all the examinations of said committee. They shall keep a record of the examination of candidates for teachers of all district (intermediate or primary) schools, and such examination in branches of teaching in which the same may be practicable, shall be in writing. The original papers shall be preserved, and a figure or estimate affixed to each study, whether the examination therein be written or oral. The aggregate percentage or estimate for each candidate shall be test of proficiency, and the list of candidates shall be preserved for the selection of teachers by the board, which shall be bound to select for each and any future vacancy from the twenty names standing highest on the list; provided, the committee on teachers shall strike from the list all persons removing from the city, or resigning or declining to be further considered as candidates, and may for cause or reason rendering unfit the employment of the candidate, notwithstanding proficiency, remove his or her name therefrom, and no name shall be striken from the list by the committee on teachers only as provided for in this act, in case of dismissal of teachers. Teachers in the schools who shall have been examined by the committee

or the State Superintendent, and whose percentage or estimate shall place them in the list of candidates to be selected from, shall be duly considered for promotion in all cases of vacancy; and further provided, that nothing in this section shall be construed to prohibit the State Superintendent of Education from issuing to teachers state certificates of qualification.

SEC. 10. *Be it further enacted, etc.,* That the Board of Directors of the public schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenue shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt.

SEC. 11. *Be it further enacted, etc.,* That this act shall take effect from and after its passage, and all laws or parts of law conflicting therewith be repealed as far as they so conflict.

Act No. 74 of 1880, Page 84.

AN ACT

To authorize the City of New Orleans to fund its floating debt; to provide for the issuance of bonds therefor; to make such bonds receivable for certain back taxes and for the purchase price of property sold for certain back taxes or otherwise; to provide for the interest on such bonds and for their ultimate payment.

WHEREAS, it is provided in Article 254 of Constitution that the General Assembly, at its next session after the adoption of this Constitution, shall enact such legislation as may be proper to *liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof*, and

WHEREAS, the creditors of the said city whose claims are unbonded, although audited and acknowledged, are without any transferable certificates of such indebtedness, and are thereby placed at an unfair advantage; and

WHEREAS, the recent Constitutional Convention authorized the funding of the floating indebtedness of the State into three per cent bonds, receivable for back taxes and licenses, thus indicating a wise and equitable plan for the liquidation of such indebtedness:

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the municipal government of the City of New Orleans be and is hereby authorized and empowered to issue, from time to time, as they may be required, bonds of the denomination of five dollars ($5.00), having ten years to run from the first day of July, 1880, bearing interest at the rate of three (3) per cent per annum, payable at the City Hall, in New Orleans, and with semi-annual coupons attached.

SEC. 2. *Be it further enacted, etc.*, That the said series of bonds shall not be issued in excess of the amount of the valid floating indebtedness of the City, *including school timb certificates or orders outstanding January 1st*, 1880, and shall only be issued, used or exchanged as provided in this act.

SEC. 3. *Be it further enacted, etc.,* That the said bonds may be issued to take up the unbonded valid indebtedness of the said City of New Orleans, *and the unpaid salaries of school teachers* and expenses of maintaining the Public Schools created since 1872 and prior to January 1st, 1880; *provided,* that no past due interest coupons or judgment debts against said City of New Orleans shall be funded into said bonds; *and provided further,* that Metropolitan Police Warrants or certificates issued in excess of the quota of said City of New Orleans shall not be convertible into said bonds.

SEC. 4. *Be it further enacted, etc.,* That the municipal government of the City of New Orleans shall provide, by municipal ordinance, for the exchange of said bonds for such floating indebtedness as mentioned in this act.

SEC. 5. *Be it further enacted, etc.,* That all moneys received into the treasury of said City of New Orleans for taxes and licenses due the said city prior to the first day of January, 1879, shall be and are hereby set aside and shall constitute a special fund for the payment of the interest on said bonds authorized in this act, and to provide a sinking fund to redeem the same at maturity. All money received by the said City of New Orleans for unpaid taxes and licenses for the year 1879 shall go to the said fund for the payment of the interest on said bonds, and to provide a sinking fund *for their redemption;* and the proceeds of such taxes and licenses for the year 1879 shall not be used or expended for any other purpose than herein specified; *provided,* that if there shall be any unpaid floating indebtedness for the year 1879, such floating indebtedness may be paid out of the money derived from the taxes and licenses of that year.

SEC. 6. *Be it further enacted, etc.,* That the bonds herein and hereby authorized to be issued, together with the interest coupons to said bonds attached, shall also be receivable for all taxes and licenses due said city prior to the first day of January, 1879. The said bonds and interest coupons shall also be receivable in payment for the purchase price of any property which may be sold by the city for taxes or licenses due prior to January 1st, 1879, or which may be otherwise sold, except for taxes and licenses exigible subsequent to January 1st, 1879.

SEC. 7. *Be it further enacted, etc.,* That the sinking fund

provided herein for the redemption of any balance of said bonds which may be outstanding at maturity shall be established and regulated in detail by ordinance of the city government of the City of New Orleans; the said city may further provide for receipts to the said sinking fund, and should the collections of the unpaid taxes and licenses for the year 1879 be insufficient to meet the interest on said bonds, the said city shall otherwise make up the deficit; provided, that nothing in this act shall be construed to authorize any interference with the premium bond scheme, as heretofore authorized and ratified by the General Assembly.

SEC. 8. *Be it further enacted, etc.,* That all laws or parts of laws in conflict with this act and the same are hereby repealed.

Act No. 67 of 1884, Page 89.

AN ACT

To amend and re-enact Sections 2, 3, 5, of an act entitled: "An act to liquidate the indebtedness of the City of New Orleans, and to apply its assets to the satisfaction thereof; to create a Board of Liquidation, and prescribe their duties; and to provide for a fiscal agent, and for the levying of a sufficient tax to pay said interest," approved April 10th, 1880; and to further provide for the redemption of the bonds authorized herein, the payment of the interest on the same, when said tax is not levied; and for the disposition and sale of said assets and other property.

WHEREAS, due notice of the introduction of this act has been given, in accordance with Article 48 of the Constitution; and

WHEREAS, the legislation heretofore enacted, under Article 254 of the Constitution of the State, providing for the liquidation of the indebtedness of the City of New Orleans, has in part proved inoperative.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That Section 2, of Act No. 133, approved April 10th, 1880, be amended and re-enacted so as to read: That the Commissioners of the consolidated debt, or the city officers, provided and named in Section 1 of this Act, and the syndicate hereby created, shall constitute a Board of Liquidation of the city debt, and the said Board shall have exclusive control and direction of all matters relating to the judgment and bonded debt of the City of New Orleans. The Board of Liquidation shall cause to be prepared bonds of the City of New Orleans, which bonds shall only be used for the purpose of negotiation or exchange, as hereinafter provided. The said bonds shall be signed by the Mayor and Treasurer of the City of New Orleans, and countersigned by the Comptroller of said city; they shall be dated June 1st, 1884, and be made payable in fifty years from said date, or sooner, at the option of the City, and bear interest at the rate of five per cent per annum from the date of said bonds, payable semiannually on the first days of June and December of

year; said interest to be represented by one hundred coupons each annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond, but the said bonds shall be made payable, interest and principal, in lawful money of the United States.

SEC. 2. *Be it further enacted, etc.*, That Section 3 of Act No. 133, approved April 10th, 1880, be amended and re-enacted so as to read: "That the said Board of Liquidation of the City Debt be and is hereby authorized and required, and it is made the duty of the said Board, *to retire and cancel the entire debt* of the City of New Orleans, now in the form of executory judgment and registered, under the provisions of Act No. 5, of 1870, and that hereafter may become merged into executory judgment and likewise registered; *except the floating debt or claims created for and against the year* 1879, *and subsequent years;* that it is the full intent and meaning of this act to apply solely the privileges to executory judgments, at the present rendered against the said City, and to such floating debt or claims against said City for 1878, and previous years merged and to be merged into executory judgments, *whether absolute or rendered against the revenues of any particular year or years previous to the year* 1879; that for the purpose of retiring and cancelling said judgment debt, the said Board is authorized and required either to sell the bonds to be issued under this Act at not less than their par value and apply the proceeds thereof to the payment of said judgments, as above specified, or issue said bonds in exchange for said judgments.

SEC. 3. *Be it further enacted, etc.*, That Section 5 of Act No. 133, approved April 10th ,1880, be amended and re-enacted so as to read: That it shall be the duty of the City of New Orleans to turn over and transfer to the Board of Liquidation immediately after the passage of this Act, all property of the City of New Orleans, real and personal, not dedicated to public use; provided, that in the sale of batture property, which is herein included, the right of the city to all future accretions shall be reserved, all assets of said City realized, and to be realized, except such assets and revenues as pertain to the administration of said city,

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and necessary for the support of the same as at present authorized, *all uncollected revenues of said city anterior to the year* 1879, *when collected;* and the said Board is hereby authorized and required to dispose of said property and assets, other than stock held in corporations on such terms and conditions as such Board many deem to be to the best interest of the city, *and apply the proceeds thereof together with the uncollected revenues above mentioned, when the same are collected:* FIRST, to the payment of the interest on the bonds authorized herein in the event that the tax authorized by Section 11 of said Act No. 133, approved April 10th, 1880, be not levied; SECOND, to the redemption and cancellation of the said bonds; *provided,* that bids for the sale of the same shall be sealed proposals, and that preference shall be given the lowest bidder; and provided further, that no bids above the par value of said bonds shall be accepted.

SEC. 4. *Be it further enacted, etc.,* That for the further redemption of said bonds the said Board of Liquidation is hereby authorized and required after each and every allottment of series following the passage of this Act, to advertise for sealed proposals for the exchange of drawn premium bonds in possession of the city for the bonds authorized herein to the amount of fifty thousand dollars, of said bonds issued under this Act; provided, that no exchange be made unless preference be given to the lowest bidder.

SEC. 5. *Be it further enacted, etc.,* That nothing shall herein be construed as in any manner affecting or interfering with the disposal of property of said city, created under the provisions of Act No. 33, approved March 31st, 1877, otherwise than is provided in Section 14 of said Act.

SEC. 6. *Be it further enacted, etc.,* That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

Act No. 110 of 1890, Page 144.

JOINT RESOLUTIONS

Proposing an amendment to the Constitution providing for the funding of the bonded debt of the City of New Orleans, other than Premium Bonds, into four percent bonds; porviding a special tax of one per cent to pay the bonded debt of the city, and exempting the said four percent bonds from taxation, and further authorizing the said city to assume and pay such unpaid claims of the Board of School Directors of said city and Parish which it may find to be equitably due by said board.

SECTION 1. Be it resolved by the Senate and House of Representatives of the State of Louisiana, two-thirds of all the members elected to each house concurring, That the following amendments to the Constitution of the State be submitted to the election of the State at the next election for Representatives for the General Assembly in the year 1892, for the purpose of retiring the now existing valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the act of the Legislature No. 58, of 1882, and *to retire judgments now or hereafter rendered against the said city on floating debt claims prior to* 1879, *entitled to be funded under Act No.* 67, *of* 1884, the said City of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the Board of Liquidation of the City Debt, bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing four per cent per annum interest, to bear date and be in the form prescribed by the Legislature. The said bonds shall be applied by the said board to the retirement of said *outstanding bonds and judgments*, by the sale of said Constitutional Bonds, and *application of the proceeds of sale by the Board of Liquidation, to pay or purchase said outstanding bonds and judgments*, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the Legislature. For the payment of the interest and principal at maturity, of said constitutional bonds, and other

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outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said city, the said city is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent on all the real and personal property of the city, said tax to be part of, and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans, *and the said tax shall be paid over as collected to, and be applied* by the Board of Liquidation, to the payment of the interest and principal at maturity of said constitutional bonds, and outstanding bonds not retired, and to the payment of the allotments of premium bonds and premiums extant, in the hands of holders.

Said tax is hereby declared to be the contract right of the holders of all said bonds; and the exemption of said constitutional bonds from all taxation by the City of New Orleans and State of Louisiana, is hereby recognized and declared, and after the payment of all the annual interest on said constitutional bonds and bonds not retired and the payment of the said annual allottments of premium and premiums extant in the hands of holders, and after making provisions for a sinking fund, as such time and of such an amount as the Legislature prescribes, the surplus of said one per cent shall be disposed of as prescribed by the Legislature.

The act passed at the present session No. 36, entitled "An Act to carry into effect the Constitutional Amendment passed at the present session relative to the bond debt of the City of New Orleans," etc., be and is hereby approved and confirmed in all its parts as a contract between the City of New Orleans and the holders of the aforesaid constitutional bonds, premium bonds and of the bonds outstanding not retired as aforesaid.

SEC. 2. *Be it further resolved, etc.*, That the City of New Orleans be and is hereby authorized and empowered to examine into and assume the payment of the claims or obligations of the Board of School Directors for the City and Parish of Orleans *due for the years* 1880, 1882, 1883 and 1884, now in the hands of original owners, who have in nowise parted with their right of original ownership or pledged the same, as may be found to be equitably due

by said board for services rendered, labor performed or material furnished by authority of said board.

SEC. 3. *Be it further resolved, etc.,* That all electors voting at said election for said amendment shall place upon their ballots the words "For the City of New Orleans Debt Amendment," and all electors voting at said election against said amendment shall place on their ballot, "Against the City of New Orleans Debt Amendment."

AN ACT

To carry into effect the Constitutional Amendment passed at the present session of the Legislature, relative to the bond debt of the City of New Orleans, and to authorize and direct the said city to issue through the Board of Liquidation of the City Debt, four per cent bonds, to be known as the Constitutional Bonds of the City of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bond debt of said city, premium bonds excepted, by the sale of said constitutional bonds and application of proceeds by the Board of Liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the city on floating debt claims created prior to 1879, and to authorize the purchase by said board of said outstanding bonds, other than premium bonds, or, the exchange thereof for said constitutional bonds, and for the payment of said constitutional bonds and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the city of the tax of one percent now levied for the bond debt, and to direct the payment to and application by the Board of Liquidation of said taxes, to the purposes aforesaid for which it is levied, and to provide a sinking fund for said constitutional bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said constitutional bonds from all taxation, and to define the functions and powers of said Board of Liquidation.

Whereas, due notice of intention to apply for the passage

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of this act having been advertised, as required by Article 48 of the Constitution.

SECTION 1. Relates to the City of New Orleans through the Board of Liquidation of the City Debt authorized to issue certain bonds; amount, form and tenor of bonds; how bonds are to be numbered and by whom signed; bonds to be countersigned by the president and secretary of the board; report to be made to the Mayor; report to be examined by the Finance Committee of the City Council.

SEC. 2. Relates to the Board of Liquidation authorized to sell said bonds; sales to be advertised; advertisements to provide the manner by which sales are to be consummated.

SEC. 3. *Be it further enacted, etc.*, That all the funds received by said Board of Liquidation from the sale of constitutional bonds, shall be immediately deposited with the fiscal agent of the City of New Orleans or if the fiscal agent is not satisfactory in the opinion of the board, with a chartered depository selected by the board to the credit of a special fund called the "Bond Sales Fund," which said fund shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the City of New Orleans matured or subject to be called, including certificates or bonds issued under the fourth section of Act 58 of 1882, and including judgments now or hereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67, of 1884, but excluding premium bonds issued under the Act No. 31, of 1876, not to be retired under this act, and the interest upon all said bonds subject to call, shall cease after publication of the calls, as now provided by existing laws; no check shall be honored on said fund unless accompanied by a certificate signed by the president and secretary of said board, describing the bonds it is intended to retire, and certifying that said bonds have been surrendered to said board and cancelled, or describing the judgments to be paid and annexing a certificate of its satisfaction.

SEC. 4. Relates to the Board of Liquidation authorized to purchase unmatured outstanding bonds of the city, premium bonds excepted.

SEC. 5. Relates that the Board is authorized to exchange bonds issued under this act for valid outstanding bonds

of the City of New Orleans. Manner of advertising for proposals.

SEC. 6. Relates to bonds retired under the provisions of this act; how cancelled.

SEC. 7. Relates to providing the manner by which the principal and interest of the bonds issued under this act shall be paid; special ad valorum tax of one per cent to be levied on all taxable property in New Orleans; taxes how levied and collected.

SEC. 8. Relates to making provisions for a sinking fund; surplus, how apportioned to several funds.

SEC. 9. Relates to $500,000.00 of Constitutional Bonds to be retired each year, after 1926; $700,000.00 of bonds to be retired each year commencing with the year 1937; mode by which bonds are to be retired and cancelled.

SEC. 10. Relates to permanent Public Improvement Fund, purposes for which applied.

SEC. 11. Relates to the Board of Liquidation created a body corporate, its powers, duties and restrictions.

SEC. 12. Relates to members of the Board of Liquidation; how removed.

SEC. 13. Relates to provision in case of vacancy of all or a majority of the members of the board.

SEC. 14. Relates to registry of bonds, how made.

SEC. 15. Relates to Constitutional Bonds exempt from said taxation.

SEC. 16. Relates to provisions of this act declared to be a contract between the City of New Orleans and the holder of said bonds.

SEC. 17. Relates that the Board of Liquidation shall immediately cease extending outstanding bonds under the Act No. 58, of 1882.

SEC. 18. Relates to the provisions of this act, how construed in relation to taxes now levied.

SEC. 19. *Be it further enacted, etc.,* That the general provisions of this act shall not take effect until the adoption of the aforesaid constitutional amendment; provided, however, that portion of the act prohibiting the further extension of bonds under the act No. 58, of 1882, shall go into effect immediately, and all laws or parts of laws contrary to or inconsistent herewith be and the same are hereby repealed.

Acts of Louisiana 1894, No. 136, Page 171.

AN ACT

TO PROVIDE FOR THE PAYMENT OF THE SALARIES AND EXPENSES OF THE PUBLIC SCHOOLS OF THE CITY OF NEW ORLEANS.

Whereas due notice of the intention to apply for the passage of this act has been published in conformity to Article 48th of the Constitution, and whereas, the Legislature of 1880 provided in Act 74 of that year for the payment of the salaries of the school teachers and expenses of the public schools, but the mandate of the Legislature was not carried into effect, and

Whereas, the constitutional amendment *proposed by Act* 110 *of* 1890, and duly adopted gives to the Legislature the power of disposing of the surplus of the one per cent bond tax levied by the City of New Orleans, and whereas, the School Board of the city schools is now provided with ample funds to carry on the public schools and pay off its lawful indebtedness;

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That all the school taxes collected by the City of New Orleans prior to 1880 be turned over to the Board of Liquidation of the City Debt of New Orleans.

SEC. 2. *Be it further enacted etc,,* That whenever a judgment shall be rendered or has heretofore been rendered against the Board of School Directors of the City of New Orleans, whether the same be absolute against the School Board, or payable out of school taxes levied by the City of New Orleans for any particular year or years and the same shall have become final and executory, the plaintiff in the suit shall cause a copy of the petition, answer and judgment duly certified by the clerk to be final and executory to be lodged in the hands of the secretary of the Board of Liquidation of the City Debt of New Orleans, whose duty it shall be to record the same in a book kept for that purpose.

SEC. 3. *Be it further enacted, etc.,* That it shall be the duty of the Board of Liquidation to distribute the share

of the funds provided for in Section 8 of Act 110, of 1890, which shall accrue to the School Board of the City of New Orleans, as follows, viz:

1. Out of the funds so accruing from the taxes for the years 1892, 1893 and 1894, it shall first pay to the School Board, in addition to amounts heretofore paid, the sum of one hundred sixty thousand dollars ($160,000.00).

2. Out of the funds so accruing from the taxes of the year 1895, it shall first pay to said School Board such an amount as will, with any amounts appropriated by the City of New Orleans for school purposes, reach a total of two hundred ninety seven thousand, five hundred dollars ($297,500.00).

3. Out of the funds so accruing from the taxes of the year 1896, and of each year thereafter, it shall first pay to said School Board for each year such an amount as will with any amounts appropriated by the City of New Orleans for school purposes, reach a total of three hundred thirty seven thousand, five hundred dollars ($337,500.00).

4. It shall, after making the payments aforesaid, distribute any amounts remaining in its hands and accruing to said School Board, among the holders of judgments so recorded with it, in the order of their registry until the same shall have been paid in full.

5. It shall pay over to said School Board any amounts accruing to it out of said funds after paying judgments in full.

SEC. 4. *Be it further enacted, etc.,* That this law shall take effect from and after its passage and any and all laws in conflict with this provision of this act be and the same are hereby repealed.

Act No. 81 of 1888.

AN ACT

In relation to free public schools, and to regulate public education in the State of Louisiana; to provide a revenue for the same, and impose certain penalties; and to apply fines imposed by district courts, and amounts collected on bonds, to the purpose of public education, and to provide for the payment of unpaid balances due to the public school teachers of New Orleans, for the years 1880, 1881, 1882 and 1884.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That the Governor and Superintendent of Public Education, and the Attorney General, together with six citizens to be appointed by the Governor, one from each Congressional District of the State, shall be a body politic and corporate by the name and style of the Board of Education for the State of Louisiana, with authority to sue and defend suits in all matters relating to the interest of the public schools. The above specified six citizens shall receive, as compensation for their services in attending the meetings of the board, their actual traveling expenses and per diem for the number of days that the board is in session, the same as members of the State Legislature, payable on their warrants, approved by the president and secretary of the board, out of the school fund.

SEC. 2. Relates to ex-officio members and times of meetings of board.

SEC. 3. Relates to parochial boards of school directors. Rules, by-laws and regulations for the government of the common schools of the State, and their enforcement. Text books; their uniformity and changes.

SEC. 4. Relates to additional reports by parish superintendents.

SEC. 5. Relates to the term of office of members of parish boards and parish superintendents; vacancies and oath of office.

SEC. 6. Relates to the several school boards bodies corporate.

SEC. 7. Relates to the president and secretary, and auxiliary visiting trustees. Duties of the Directors of parish boards. Schools funds; how apportioned. School houses; their erection and repairs.

SEC. 8. Relates to removals of parish superintendents and their appeals.

SEC. 9. Relates to counsels of parish boards.

SEC. 10. Relates to graded, central and high schools, and ordinances for their establishment. Fuel account; how provided.

SEC. 11. Relates to school districts; how created.

SEC. 12. Relates to school districts in two adjoining parishes; how laid out.

SEC. 13. Relates to the option of school children as to two adjoining school districts.

SEC. 14. Relates to what branches shall be taught in every district, and in French or English in those localities where French language predominates.

SEC. 15. Relates to the duties and powers of the president of parish school boards. Duties of officers. Duties of secretary.

SEC. 16. Relates to the office for the State Superintendent; and what shall be filed therein, Vacancies in the office of State Superintendent; how filled.

SEC. 17. Relates to the salary of State Superintendent; office fixtures, stationery, books, etc., and clerk and porter.

SEC. 18. Relates to the supervisory duties of the State Superintendent.

SEC. 19. Relates to what account he shall specially keep.

SEC. 20. Relates to biennial report of the State Superintendent and what it shall contain, and number of copies to be printed, and distributed and exchanged.

SEC. 21. Relates to suggestions biennially required as to the institution of the blind, deaf and dumb.

SEC. 22. Relates to certified copies of the State Superintendent's records and papers admissable evidence.

SEC. 23. Relates to his duty to report all neglects of duty and improper uses of school funds.

SEC. 24. Relates to the State Superintendent to decide all controversies and disputes among the directors, super-

intendents and teachers, subject to appeal to the State Board, and with the help of Attorney General when he desires it.

SEC. 25. Relates to the qualifications and salary of parish superintendent.

SEC. 26. Relates to their visiting duties.

SEC. 27. Relates to additional compensation to parish superintendents; when allowable.

SEC. 28. Relates to a committee for the selection of teachers, how constituted.

SEC. 29. Relates to report of school children in each parish and district; when and by whom to be made.

SEC. 30. Relates to the annual reports of the parish superintendnets; when and to whom made; what it shall embrace, and penalty for failure or neglect to make the report.

SEC. 31. Relates to their records of business transactions; descriptions of school districts and custody of papers and documents.

SEC. 32. Relates that they administer certain oaths.

SEC. 33. Relates to reports of teachers and others; when and where to be received.

SEC. 34. Relates to parish superintendents to hold institutes for the improvement of teachers.

SEC. 35. Relates to the attendance of the teachers obligatory.

SEC. 36. Relates to the length of legal sessions and forfeiture for non-attendance.

SEC. 37. Relates to honorary and active members of these institutes.

SEC. 38. Relates to roll of members.

SEC. 39. Relates to parochial managers of institutes; their qualifications and duties.

SEC. 40. Relates to institute funds; how collected, kept and expended.

SEC. 41. Relates to institute provisions not applicable to the parish of Orleans.

SEC. 42. Relates to institutes ordered by the State Board; how held and attended.

SEC. 43. Relates to obligatory reports as to these institutes.

SEC. 44. Relates to examination of candidates for positions of teachers by whom and how conducted.

SEC. 45. Relates to prerequisite fee from candidates for examination.

SEC. 46. Relates to duties and powers of examiners and penalties for malfeasance.

SEC. 47. Relates to qualifications for a third grade certificate.

SEC. 48. Relates ditto for second grades.

SEC. 49. Relates ditto for high school or first grades.

SEC. 50. Relates to prerequisite of an annual license. Exception as to examination for all three years' teachers.

SEC. 51. Relates to school register and monthly reports from each teacher obligatory.

SEC. 52. Relates to accountability of pupils to teachers.

SEC. 53. Relates to quarterly apportionment of school funds.

SEC. 54. Relates to police jurors and boards of trustees, alderman and legal representatives of cities, towns and vilages (except the Parish of Orleans) to levy one and a half mills for school purposes, in their annual budgets. Compulsory proceedings in case of their failure or refusal.

SEC. 55. Relates to fines and forfeited bonds applicable to the support of common schools.

SEC. 56. Relates to the parish treasurer to be school treasurer.

SEC. 57. Relates to his bond as such; its obligations and registry.

SEC. 58. Relates to the transfer of school funds.

SEC. 59. Relates how school funds are disbursable. Annual estimate of revenues.

SEC. 60. Relates to the compensation of the treasurer.

SEC. 61. Relates to annual accounts of receipts and disbursements, when required and how made.

CITY SCHOOLS

SEC. 62. *Be it further enacted, etc.,* That all the public schools of the Parish of Orleans, and the property and appurtenances thereof, shall be under the direction and control of a board of directors. Said board shall consist

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of twenty members, eight of whom shall be appointed by the Governor, by and with the consent and approval of the State Board of Education, and twelve members thereof shall be elected by the City Council of New Orleans. The members of said Board shall hold office during four years after their appointment and election, except as hereinafter provided, and until their successors are appointed or elected and qualified. On the first organization of said board by the members thereof, who shall be appointed and elected on the passage hereof, and in the manner aforesaid, the members shall be divided into four classes, by such method as they may choose, each class to consist of three members elected by the City Council, and two members appointed by the Governor, by and with the consent and approval of the State Board of Education, whose terms shall expire respectively in one, two, three and four years, and whose successors shall be elected and appointed for four years, and in the manner set forth above; so that one-fourth of the membership of said board shall expire and be elected and appointed annually. Vacancies in membership shall be filled by the appointive or elective power, as herein provided.

SEC. 63. *Be it further enacted, etc.,* That said Board of Directors of the public schools of the Parish of Orleans shall be a body corporate in law, with power to sue and to to be sued. Eleven members shall constitute a quorum for the transaction of business. Legal process shall be served on the president; in his absence or inability to act, on the vice-president. The City Attorney shall act as attorney for the board. The board shall be organized within ten days after its appointment, with a president and a vice-president chosen from among its members, and a secretary, who shall not be a member of the board. The salary of the secretary shall not exceed the sum of eighteen hundred dollars ($1,800.00) per annum. In addition to the duties of his office, which may be fully prescribed by the board, he shall make a quarterly report to the State Superintendent of Education of the cost of maintaining the city schools, and shall keep the accounts of said board in such a manner as to be in strict accordance with such budget as they may adopt, certifying to said board at each monthly meeting the expenses of said board for each current month. Said board shall have control

of all buildings, records, papers, furniture and property of any kind pertaining to the administration of the schools, and shall have the management of all the public schools within the limits of the City of New Orleans. The expenses of said Board for its stationery and other purposes shall not exceed twelve hundred dollars per annum, this limitation not to apply to the schools or teachers, but simply to the expenses of the board. The salary of the secretary shall be paid in the same manner as hereinafter provided for the payment of the salary of the superintendent.

SEC. 64. *Be it further enacted, etc.,* That in addition to the powers and duties hereinbefore granted to and imposed upon parish boards, the powers and duties of said Board of Directors of the Parish of Orleans shall be as follows:

FIRST. It shall adjust and fix equitably the salaries of teachers and porters or portresses employed in the schools, and of the secretary and employees and of such assistant superintendents as it may deem necessary for an efficient supervision of the schools.

SECOND. It shall limit the annual expenses of maintaining the schools to the annual revenue, and the expense for any one month shall not exceed the one-ninth of the whole amount provided for the schools.

THIRD. It shall prescribe rules for subjecting teachers, or candidates for teacherships, to a careful competitive examination on all such branches as they are expected to teach, and no person shall be elected to a position as teacher without a favorable report on his or her moral and mental qualifications by an organized committee of examiners appointed by the board. Teachers regularly examined and elected shall not be removed from the schools during the time for which employed, except on written charges of immorality, neglect of duty, incompetency or malfeasance, of which he or she shall have been found guilty by majority of the members of the board, at a regular monthly meeting. The said board may except from such examination any person who has passed a satisfactory examination, as required by Act No. 23 of 1877, approved March 26th, 1877, and who holds a certificate of qualification, and who has had two years or more experience as a teacher, so that the calling of a teacher shall be elevated to a profession,

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and that a system of life certificates shall be issued to all such teachers in the City of New Orleans by the Board of Directors of City Schools; any person who is a graduate of a State Normal School, or of any college or university duly authorized to confer degrees, certificates of qualifications shall be given to all persons who successfully pass such examination.

FOURTH. It shall elect all teachers from among the candidates holding certificates in the order of their merit, as shown by such examination, including graduates of normal schools, as shown by the averages attained at their final examinations, or from among persons excepted from examination as hereinbefore provided.

FIFTH. All certificates to teachers granted hereafter, shall stand good for three years; upon a second examination at the end of three years certificates of a higher grade shall be given, to be good for five years, if the applicant is found competent to teach a higher grade school than the one for which the first certificate issued.

SIXTH. It shall hold regular monthly meetings, on a day fixed by it.

SEVENTH. It shall declare vacant the position of any of its members who shall have failed to perform the duties assigned to him, or have absented himself from two successive monthly meetings of the board without leave, or have been guilty of any breach of decorum, or any other act inconsistent with the dignity of a school director; and it shall report each vacancy to the body by which the delinquent member shall have been previously elected or appointed; it shall be the duty of the Board of Directors of city schools elected and appointed under the provisions of this act to examine and scrutinize personally the accounts of their predecessors in order to find out if their administration of the school funds, committed to their charge for disbursement, has been in accordance with law, so that in the future a proper administration of the city schools may be had.

EIGHTH. It may establish, when practicable, evening or night schools for the instruction of such youths as

are prevented by their daily vocations from receiving instructions during the day.

NINTH. It may establish, when advisable, one or more normal schools or departments for the professional training and improvement of candidates for teacherships, including, in the course of instruction and training, lectures in the natural sciences, and on the method of teaching and disciplining children, and the practical exercise of non-teaching students in model classes organized for the purpose by the faculty of the institution. To graduates of these normal schools or departments, and also to proficient students in other city schools of academic grade, the board may, in its discretion, award diplomas; and the graduates of the normal schools or departments who shall have been examined and found proficient in all the branches required to be taught in the public grammer schools, may be deemed preferred candidates for vacant positions in the city public schools, and the diplomas awarded to such graduates shall be deemed equivalent to teaching certificates of the highest grade for common schools; provided, that the final examination for graduation from said normal schools and upon which diplomas may be awarded, shall be conducted in the same manner and include the same subjects as the public competitive examinations required by paragraph "3" of this section.

SEC. 65. *Be it further enacted, etc.*, That no school director of the City of New Orleans shall receive compensation for his services as school director.

SEC. 66. *Be it further enacted, etc.*, That the said board is authorized to appoint for the constant supervision and periodical examination of the public schools of the Parish of Orleans, a competent and experienced educator to be designated as superintendent. He shall aid the directors in organizing the schools and in improving the methods of instruction therein, in examining candidates for teacherships, and in conducting periodical examinations of pupils for promotion through the respective grades of the schools, and in maintaining general uniformity and discipline in the management of all the schools. He shall make semi-annual reports on the condition and needs of the schools, to the said board, and an annual report, on or before the

first of January, to the State Board of Education, as hereinbefore required; and, whenever notified to be present, he shall attend meetings of the State Board of Education. The superintendent shall receive an annual salary of two thousand dollars, payable in equal monthly installments, payable on the roll of the Board of Directors of City Schools in the same manner and at the same time that the employees and expenses of said board or directors are paid. He shall hold his office for the term of four years, subject to removal by the board for neglect of duty or malfeasance, of which, after an impartial hearing by the board, he shall have been adjudged guilty. He shall be ex-officio a member of said board and entitled to participate in its deliberations and debates, and in the examinations of candidates for teacherships, but he shall not cast a vote in the board.

SEC. 67. *Be it further enacted, etc.*, That the Treasurer of New Orleans shall ex-officio be the treasurer of said board, and shall receive all funds apportioned by the State to such city, or received or collected for the support of the free public schools from any and all sources. He shall give bond, with good and solvent security, in the sum of ten thousand dollars ($10,000.00), in favor of the president of said board and his successors in office, to be accepted and approved by said board and recorded in the mortgage Office of the parish, and which bond shall then be filed and kept on record in the office of said board. The filing of said bond and taking and filing the usual oath of office before any officer authorized to administer the same, shall qualify the treasurer to act.

SEC. 68. *Be it further enacted, etc.*, That said treasurer shall hold his office for four years, or during his term of office as City Treasurer, unless sooner removed after due trial and hearing by said board, for neglect of duty or malfeasance in office; and in case of removal by the board, it shall elect a treasurer who shall not be a member. He shall receive the sum of six hundred dollars ($600.00) per annum for the trouble and expenses which may be incurred by him in the discharge of the duties imposed under this act, payable monthly on his own warrant, as hereinbefore provided for the payment of the superintendent's salary. He shall keep his office open at all such times as may be prescribed by said board, for the payment of pay-rolls or

checks in favor of teachers and other employees of the board.

SEC. 69. *Be it further enacted, etc.*, That the Mayor, Treasurer and Comptroller of the City of New Orleans shall be ex-officio members of said board and entitled to take part in all the debates and deliberations in said board on the ways and means for maintaining the public schools of said parish, but they shall not have the right to vote.

SEC. 70. *Be it further enacted, etc.*, That in addition to the duties imposed upon Boards of School Directors, it shall be the duty of said board for the Parish of Orleans to present to the common Council of the City of New Orleans, on the first day of November, of each year, a full report of the condition of the city schools, showing the number of teachers and other employees and their salaries; the number and location of school houses, with the condition thereof, and the estimated cost of keeping all appurtement grounds in good repair during the ensuing year; also a detailed exhibit of all receipts and expenditures of the board for the schools during the previous twelve months; said report shall be accompanied with a statement certified by the officers of the board of the average daily attendance of pupils during the annual session, and the average expense per capita of their instruction.

SEC. 71. *Be it further enacted, etc.*, That it shall be the duty of the Common Council of the City of New Orleans, in making up their budget of annual expenses, to include therein the amount necessary to meet the expenses of the schools, as shown by the statement of the actual attendance and cost of instruction required by the proceeding section, with such additional allowance for probable increased attendance and contingent expenses as may seem just and reasonable to the City Council, and to keep in good repair all school houses and school grounds belonging to the city; provided, that the sum appropriated with the probable receipts from the state school fund and poll tax, shall not exceed aggregate amount required for the maintenance of the schools during the year, and for keeping in good repair all school houses and school grounds belonging to the City, as shown by the statement of the school board; and, *provided further*, that the amount to be appropriated by said city shall not be less than the sum of two hundred and fifty thousand dollars ($250,000.00); of said amount so to be appropriated

by said city council, not less than the sum of one hundred and seventy-five thousand dollars ($175,000.00) shall be provided for in the annual city budget of expenditures, and the balance out of the reserve fund of twenty per cent, constituted by Section 66 of Act No. 20, approved June 23rd, 1882, and by Act No. 109 of 1886, and said balance is hereby constituted a first lien and claim against said reserve fund, and shall be paid out of the first collection made on account of the same and by preference over all claims whatsoever; provided further, that out of the amount so appropriated by said city, said board of directors shall, in the year 1889 and annually for five years thereafter, appropriate a sum sufficient to extinguish at least one-sixth of the unpaid claims against said board for the years 1880, 1881, 1882 and 1884, so that said claims shall be entirely paid by the beginning of the year 1895. The Board of Directors for the Parish of Orleans are hereby authorized to enforce the provisions of this section by the application to a court of competent jurisdiction, by a writ of mandamus or other effective remedy.

SEC. 72. *Be it further enacted, etc.,* That for the purpose of affording proper evidence of said claims aforesaid (and for no other purpose whatsoever) said board shall issue certificates of indebtedness to an amount equal to the total amount of said claims and maturing in six equal installments on the first day of January, 1890, 1891, 1892, 1893, 1894 and 1895.

SEC. 73. *Be it further enacted, etc.,* That the different boards of directors shall not be empowered to make contracts or debts for any one year greater than the amount of revenue provided for according to this act, it being the intent hereof that parties contracting with said board shall take heed that due revenue shall have been provided to satisfy the claim, otherwise they may lose and forfeit the same and no action or execution shall be allowed in aid thereof, and that the board shall not exceed their power in incurring the debt.

SEC. 74. *Be it further enacted, etc.,* That this act shall go into effect from and after its passage; and nothing in this act shall be so construed as to vacate the office of any teacher until the expiration of the term for which he or she shall have been appointed under existing laws, nor as requiring such persons now teaching in the public schools

of the City of New Orleans to qualify in accordance with this act or to pass such examinations as are otherwise demanded by Paragraph 5 of Section 64, and that all laws in conflict with the provisions of this act be, and the same are hereby repealed, except acts passed at the present session of the General Assembly.

S. P. HENRY,
Speaker of the House of Representatives.

JAMES JEFFRIES,
Lieutenant-Governor and President of the Senate.

Approved July 12th, 1888.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original: JOS. GEBELIN,
Assistant Secretary of State.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

NO. 43.

JOHN B. FISHER, *et al., Plaintiffs in Error,*

vs.

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS, *Defendant in Error.*

SUPPLEMENTAL BRIEF ON BEHALF OF THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

In the preparation of the original brief for the defendant in error in this case, we omitted, in discussing the interpretation of Act # 36 of 1873, page 73, and the City Council's discretion with reference thereto, Act # 123, of 1874. It will be remembered that Section 4 of Act # 36 of 1873, page 73, required the City Council, after receiving the estimate of the School Board for the year 1873, and for subsequent years, to make provision for the support of the public schools and for that purpose to levy a tax of not

less than one-fourth of one per cent on the taxable valuation of all property in the city of New Orleans. As appears in the original brief and from the record, pages 41, 43 and 44, the City Council of New Orleans did levy for the support of the public schools the one-fourth of one per cent required for the years 1874, 1875, 1876, 1877 and 1878.

The City Council by Ordinance No. 2418, Administration Series, adopted Dec. 9, 1873, levied a tax for the public schools for the year 1874, at the rate of one-fourth of one per cent. Record, folios 41 and 42. By Ordinance #2595, Administration Series, the City Council adopted and ratified Ordinance #2418, Administration Series, of Dec. 9, 1873, in the following words, to wit:

> *"And Ordinance #2418, Administration Series, adopted Dec. 9, 1873, which provides for the levy of a public school tax for 1874, at the rate of one-fourth of one per cent on the assessed valuation of all property, shall remain in full force."* Record, folio 42.

In support of defendant's position that the city of New Orleans was vested with discretion in levying the school taxes in any greater rate than one-fourth of one per cent, and in support of the further position of the city that the estimates of the School Board were not binding and obligatory upon the Council, but were merely intended as a guide to the City Council with reference to the levying of a tax, we cite Act # 123 of 1874, which literally ratifies the action of the City Council of New Orleans in levying the minimum tax provided by Act #36 of 1873, page 73, Section 4.

Section 9 of Act #123 of 1874 provides as follows:

> "Be it further enacted, etc., That the tax required to be levied by Section 4 of Act No. 36 of 1873 shall be levied as soon as practicable after the expiration of

the month of October, or the making of the estimate of the Board of Directors, but shall not be invalidated if delayed by any cause. The levy up to one-fourth of one per cent shall in no case require an election or approval by the qualified electors, nor shall an increased levy require such election or approval unless thereby the aggregate or limit of city taxation be exceeded. Failure of the Mayor or any administrator to comply with said Section 4 of Act #36 of 1873 before the close of the year in which the estimate is made, shall render his office *ipso facto* vacant, and the Governor shall fill the same by appointment, and the Council shall then proceed to act. *Ordinance #2418, Administration Series, is hereby ratified and confirmed, and ordered to be carried out.*"

Thus it will be seen that the Legislature of Louisiana has interpreted Section 4 of Act #36 of 1873 and has ratified the action of the City Council in levying the minimum quantum of taxation therein provided. In other words, the Legislature itself by Act #123 of 1874, Section 9, has literally declared, by ratifying Ordinance No. 2418, Administration Series, levying a tax of one-fourth of one per cent for the year 1874, that the power to make said tax more than one-fourth of one per cent resided in the City Council. This legislative interpretation of Section 4 of Act #36 of 1873 is, therefore, written into the contracts upon which this plaintiff sues. The act in question became a law before the contracts sued upon were made, and, consequently, the interpretation so given to the clause of the Act of 1873, levying the tax, is written into and forms a part of any contract which the School Board made at the time or subsequent to its passage. Therefore, in confidence we submit that the City Council having levied a tax of one-fourth of one per cent during the years from 1874 to 1878 inclusive, performed its full duty and having acted and having exercised the discretion so clearly vested in it by the Legislature that its power to levy a further special tax was

and is exhausted and that no court can now compel it to levy a further tax. The following Acts of the Louisiana Legislature all relate to the point at issue, viz.:

Act #8 of 1871, page 42, particularly Section 7 thereof.

Act #36 of 1873, page 73, particularly Sections 2, 4 and 10 thereof.

Act #123 of 1874, particularly Section 9 and Section 2 thereof.

In reference to the last cited act, it is significant that in that portion of plaintiff's brief styled "appendix," is contained every act of Louisiana from 1870 to 1888, bearing upon the subject of this litigation, save and except Act #123 of 1874.

In conclusion, we respectfully direct the court's attention to the petition of plaintiff for the writ of mandamus at pages 1 to 4 of the record, which sets up the cause of action. It will be noted that the sole cause of action alleged is, that an unlimited rate of taxation was written into plaintiff's contracts by Act #36 of 1873, page 73; that the City Council of New Orleans did not levy taxes sufficient to cover the estimates submitted to it by the School Board; that, consequently, plaintiffs are entitled to a further tax levy to cover the difference between the tax as actually levied by the City Council and the estimates which were submitted. This is the only cause of action alleged by plaintiff and this is the cause of action upon which he must stand or fall. In their printed brief, they assert a cause of action which they did not allege, *i. e.*, that they are entitled to an additional tax levy by the City of New Orleans because said city was not successful in collecting the entire amount of taxes to the dollar which she levied for the years in question. This contention is an afterthought. It was not alleged in their petition; the City of New Orleans did not have the opportunity to traverse such a cause of

action, as it was not alleged in the petition, and if any evidence tending to establish such a cause of action is found in the printed record, it was properly objected to at the time and is not legal evidence. However, this question is gone into fully in the original brief. Our purpose here being to urge upon the attention of the court the fact that such a cause of action is not alleged in plaintiff's petition. All of which is respectfully submitted.

ST. CLAIR ADAMS,
Of Counsel.
I. D. MOORE,
City Attorney.

Dated Washington, D. C., November 3, 1910.

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 43.

JOHN B. FISHER *ET AL.*,
Plaintiff in Error,

versus

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS,

BRIEF IN BEHALF OF THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

Defendant in Error.

STATEMENT OF THE CASE.

This is a suit against the Mayor and Council of the City of New Orleans to compel that city by mandamus, to levy an additional special tax, to pay certain judgments and claims held by relators against the Board of School Directors of the City of New Orleans. The Board of School Directors of the City of New Orleans is technically a distinct corporate

entity, separate and apart from the corporate government of the City of New Orleans, and was created and organized by Acts of Louisiana, No. 36 of 1873, page 73.

The Supreme Court of the State of Louisiana refused this writ of mandamus, and relators obtained from the Chief Justice of that court a writ of error to this court, alleging as a foundation therefor that the contracts which they held, and some of which were reduced to judgments against the Board of School Directors, had been impaired by legislation of the State of Louisiana subsequent to 1873, and the obligations of which were further impaired by the decision of the Supreme Court of Louisiana in this case. Relators' cause of action is set forth in their petition as follows:

> "The petition of the State of Louisiana *ex rel.* John B. Fisher, James M. Fisher, William G. Fisher, and Robert B. Fisher; Francis James Gasquet, and the heirs of Joseph Hernandez; U. Koen & Co., transferees of Jose Venta; heirs, Jean Pomes; Georgiana T. Friedrichs, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell; Mary Fortier; Edward F. Duclaux; Gabriel Sintes, tutor of Marguerite, Marie Antoinette and Jeanne Marie Sintes; Widow Amelie Gautreau; Peter Johnson; H. Abraham & Son; Miss E. McCerran; heirs, M. W. Newman; E. Emanuel; J. M. Malter; S. E. Hillie; A. E. Brewer; S. Easton; Anna Fellman and Estate Adele Beer; John A. Gothans; Dr. St. M. Fortier, Wid. Eugene Quinlan, executors of F. J. Quinlan, the universal legatee of Mary Quinlan, all of whom reside in New Orleans; D. A. Chaffraix, a citizen of the French Republic; Miss Edith Faurie and T. P. Wharton, citizens of the State of New York, and Miss Fannie DeLacey, a citizen of the State of Montana, respectfully represents:
>
> "That your relators have claims against the Board of Directors of the city schools of New Orleans, now

reduced to judgments in the following cases—to wit: *Fisher vs. School Board,* No. 30,262, C. D. C.; also 39,997, C. D. C., and No. 43,840, C. D. C.; *Gasquet vs. School Board,* No. 35,156, C. D. C.; *Venta vs. School Board,* No. 35,932, C. D. C.; *Pomes vs. School Board,* No. 52,950, C. D. C.; *Young et al. vs. School Board,* No. 12,339, C. D. C.; *Fortier vs. School Board,* No. 28,801, City Court of New Orleans; *Duclaux vs. School Board,* No. 43,557, C. D. C.; *Sintes vs. School Board,* No. 56,-549, C. D. C.; *Gauthreaux vs. School Board,* No. 9647, 2nd C. C.; *Johnson vs. School Board,* No. 55,127, C. D. C.; *Abraham vs. School Board,* No. 55,115, C. D. C.; *Quinlan vs. School Board,* No. 53,102, C. D. C.; *Chaffraix vs. School Board,* No. 55,254, C. D. C.; *Faurie vs. School Board,* No. 64,646, C. D. C.; *Mrs. Anna Fellman vs. School Board,* No. 57,073, C. D. C.; amounting in the aggregate to about two hundred thousand dollars, which judgments and certificates are referred to and made a part hereof.

"That your relators, Miss E. McCerran, M. W. Newman, E. Manuel, J. M. Marter, S. E. Hellie, S. Easton, and A. E. Brewer, and estate of Mrs. Adele Beer, are the holders of said certificates, on which judgment has not been rendered, amounting to one thousand nine hundred and sixty and seventeen one-hundredth dollars, hereto annexed and made part hereof, and thirty thousand eight hundred and eighty and five one-hundredth dollars in suit of *Mrs. Adele Beer vs. School Board,* No. 56,972, C. D. C., all of which are hereto annexed and made part of this petition.

"That all of said certificates and judgments were issued and based on specific and express contracts entered into between the Board of Directors of said city schools and relators, who were teachers, and others, on contracts which have been transferred to your relators.

"Your relators aver that said contracts were entered into during the years 1874, 1875 and 1876, under the provisions of Act 36 of 1873, which authorized the

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School Board to enter into said contracts, and said Act of 1873 made them payable out of a special tax to be levied by the City of New Orleans for the support of the public schools.

"That under Section 4 of said act no limit of the rate of said special tax was fixed.

"That under the law the rate of taxation existing at the time of the contract formed a part of the contract, and is read into it, and continues to exist irrespective of subsequent legislation or constitutional enactments restricting the power of taxation.

"That Section 10 of Article 1 of the Constitution of the United States protects the contracts of relators from being impaired by subsequent legislation.

"Relators aver that the limitation of taxation as contained in Article 232 of the Constitution of the State of Louisiana of 1898 is null and void and contrary to the article of the Constitution of the United States aforesaid.

"Your relators aver, further, that they obtained from the City of New Orleans an account of all the school taxes collected by her, but the payment made on such accounting was not sufficient to satisfy the outstanding contracts.

"Relators further aver that a sufficient amount of school taxes has not been levied for the years 1873 to 1877 to pay and satisfy the judgments and claims held by your relators against the School Board.

"Relators further aver that a writ of *fieri facias* has been issued against the School Board, and that the same was returned *nulla bona* after due demand from the School Board.

"That relators know of no property owned by the board liable to seizure.

"That a demand was made on the Mayor of the City of New Orleans to point out property, and after due demand he has been unable to point out any.

"Your relators aver that the claims and judgments held by them amount to more than two hundred and fifty thousand dollars in principal, exclusive of legal interest which said claims bear.

"That a tax of one and one-half mills is necessary to pay the judgments and claims held by relators.

"That the authority granted to the Board of School Directors to enter into contract with relators and their transferees payable from the proceeds of a special tax was authority to levy the tax to pay the obligations created by and arising from said contracts.

"That relators are entitled to levy a special tax to pay their judgments and claims, which the City of New Orleans refuses to levy.

"Wherefore, relators pray that a writ of mandamus issue herein, directed to the Mayor and Council of the City of New Orleans, directing them to levy a special tax of one and one-half mills to pay the claims and judgments obtained by relators, or show cause on such day as this Honorable Court may fix why the writ of mandamus should not be made peremptory, with costs, and relators pray for general relief," etc.

Rec., fols. 1, 2 and 3.

To this petition the City of New Orleans filed an exception of no cause of action, which was overruled, and thereafter filed the following answer, which raises the defenses upon which the city hopes that this Court will reaffirm the decree of the supreme Court of Louisiana:

"Now, into this Honorable Court, through its undersigned counsel, come the Mayor and Council of the City of New Orleans, and for exception to relators' petition say that relators' petition discloses no cause of action against these respondents.

"And in case said exception be overruled, and not otherwise, these respondents reserve the benefit of said exception and of all other legal exceptions.

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"And for answer to relators' petition, and for return to the order of this Honorable Court herein rendered under date of April 30, 1907, directing these respondents to show cause on Friday, the 10th day of May, 1907, at 11 o'clock a. m., why a writ of mandamus should not issue herein, ordering these respondents to levy a special tax of one and one-half mills to pay the judgments and claims of relators, they deny all and singular the allegations in relators' petition contained, except such as may be hereinafter specially admitted.

"Further answering, these respondents aver that Section 4 of Act 36 of 1873 provided as follows:

" 'That the Council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the public schools in addition to those required in Section 3, and those ordered for the protection of city property. For the purpose of such support it shall levy a tax of not less than one-fourth of one per cent. on all taxable property in the City of New Orleans; and no provision in any special or general law limiting the aggregate power of taxation of the City of New Orleans, or of the Council, shall prevent the levying of at least one-fourth of one per cent. per annum for school purposes.'

"Further answering, these respondents deny that Section 4 of Act 36 of 1873 intended to confer, or did confer, upon relators, or upon other persons dealing with the Board of School Directors of the City of New Orleans, any contract right to an unlimited special tax to be levied by the City of New Orleans for school purposes; but respondents aver that the only special tax, and the only tax, which, by Section 4 of Act 36 of 1873, the City of New Orleans was bound to levy for school purposes for the years 1873, 1874, 1875 and 1876, and subsequent years, was one-fourth of one per cent.; and that the City of New Orleans did, in the years 1874, 1875 and 1876, levy, in accordance with Section 4 of Act 36 of 1873, a

special tax for school purposes of one-fourth of one per cent.

"Further answering, these respondents aver that the only rate of taxation, special or otherwise, which formed part of any contract made by relators with the School Board, if any tax of any amount did form part of such contract, which respondents deny, was a special tax of one-fourth of one per cent., all taxation by the City of New Orleans for school purposes over and above said one-fourth of one per cent. being, by Section 4 of Act 36 of 1873, left to the discretion of the City of New Orleans, and constituting in no way or manner part of any contract made between relators and the Board of School Directors of the City of New Orleans, or between the Board of School Directors of the City of New Orleans and any other persons.

"Further answering, these respondents aver that the total amount collected up to date of the special tax of one-fourth of one per cent., levied by the City of New Orleans for the years 1874, 1875 and 1876, as aforesaid, has been accounted for and paid over to the relators by the City of New Orleans, and all incoming collections of said special tax for the years 1874, 1875 and 1876 are, as collected, being accounted for and paid over to relators.

"Further answering, these respondents aver that, if the amounts collected, as aforesaid, of the said special taxes for the years 1874, 1875 and 1876, are not sufficient to satisfy relators' claims, relators have no recourse against these respondents for any amounts which may be due them.

"Further answering, these respondents aver that Section 10 of Act 36 of 1873 provides:

" 'That the Board of Directors of Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall

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take heed that due revenue shall have been provided to satisfy all claims, otherwise they shall lose and forfeit the same, and no action and execution shall be allowed in aid thereof; that the said board shall not exceed its powers in the incurring of debt.'

"Further answering, these respondents deny that relators have any contract right against these respondents protected by Section 10 of Article 1 of the Constitution of the United States, or any contract right or privity of contract of any kind or nature whatsoever, affecting these respondents.

"Respondents further deny that the Board of School Directors of the City of New Orleans created the obligations set forth in relators' petition by virtue of any contracts legally entered into, and deny that relators have any right to invoke the protection of the Constitution of the United States herein, and deny that the provisions in regard to the impairment of contracts are, or have been, in any manner violated by these respondents.

"Further answering, these respondents deny that certificates of indebtedness issued by the Board of Directors of the Public Schools of New Orleans during the years 1874, 1875 and 1876, or such judgments and claims as relators allege to hold, are evidences of debts against the City of New Orleans, or indebtedness of the City of New Orleans, and that relators have no claim of any kind or nature whatsoever against these respondents therefor.

"Further answering, these respondents aver that the City of New Orleans and these respondents cannot be compelled by mandamus to levy any special tax to pay relators' judgments, for the reason that Section 1 of Act 5 of the extra session of 1870 forbids any Court in the State of Louisiana to issue any writ of mandamus against any official of the City Government to compel the payment of any claims against the City of New Orleans.

"Further answering, these respondents deny that relators were, at the time when their alleged services were

rendered and their alleged contracts with the Board of School Directors of the City of New Orleans were executed, entitled to a writ of mandamus to compel the City of New Orleans to levy a greater tax for the years 1874, 1875 and 1876 than one-fourth of one per cent.; and that relators, by allowing over thirty years to elapse before making any application for such a writ, have acquired any right thereto; but should be, even if they had originally a right to a writ of mandamus, held to have waived the same.

"Further answering, these respondents aver that, if relators have merged any of the judgments alleged to have been rendered in their favor in the courts of the State of Louisiana into a judgment of the United States Circuit Court for the Eastern District of Louisiana, they are not entitled to a writ of mandamus from the Courts of this State to aid them in the execution of judgments rendered in the United States Court.

"Further answering, these respondents deny that the power of the city to levy taxes for the years 1874, 1875 and 1876, except in so far as the special tax for school purposes of one-fourth of one per cent., which, by Section 4 of Act 36 of 1873, the City of New Orleans was obliged to levy, and which it did levy, was unlimited; but avers that its power to levy taxes for the years 1874, 1875 and 1876 was, and is, limited, legally and constitutionally, and was, and is, exhausted.

"Further answering, these respondents aver that relators are without cause of action against these respondents.

"Wherefore, respondents pray that the order of this Honorable Court, made under date of April 30, 1907, directing these respondents to show cause on the 10th day of May, 1907, at 11 o'clock a. m., why a writ of mandamus should not issue, ordering them to levy a special tax of one and one-half mills for the payment of the judgments and claims of relators, be annulled, voided and set aside; and that relators' prayer, that the writ of mandamus prayed for be made peremptory,

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be denied, and that relators' suit be dismissed, and for general relief." (Rec., fols. 5, 6, 7, 8.)

The defenses raised by the City of New Orleans were maintained by the Supreme Court of Louisiana. (Rec., p. 128.)

INTRODUCTION.

This case is important in that a large sum of money is involved, alleged to be, by relators, over $150,000. The history of this litigation relates back to the creation and organization of the Board of School Directors for the City of New Orleans in 1873. In that year the Louisiana Legislature passed Act 36, page 73. The pertinent portions of said act, which will be referred to from time to time, are Sections 2, 4 and 10, which read as follows:

"SECTION 2. *Be it further enacted, etc.,* That as soon as practicable after the passage of this act the Board of Directors for the City of New Orleans shall adopt an estimate of debt and expenditures for the year 1873, and thereafter during the month [of] October in each year the board shall in like manner adopt and communicate to the Council of the City of New Orleans an estimate for the year commencing on the first of January next ensuing."

"SECTION 4. *Be it further enacted, etc.,* That the Council, after receiving the estimates required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of public schools in addition to those required in Section 3 of this act to be made for the preservation of city property. For the purpose of such support it shall levy a tax of not less than one-fourth of one per cent. on the taxable valuation of all property in the City of New Orleans, and no provision in any general or special law limiting the aggregate power of taxation of the

City of New Orleans or of the Council shall prevent the levying of at least one-quarter of one per cent. per annum for school purposes. The tax herein required to be levied for the year 1873 shall be in addition to the taxes levied by the Council in the month of December, 1872, and collectible therewith."

"SECTION 10. *Be it further enacted, etc.*, That the Board of Directors of the Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of revenue provided for according to this act or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenues shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt."

By Section 2 of said act the Board of School Directors for the City of New Orleans was directed to

"adopt an estimate of debt and expenditures for the year 1873, and for subsequent years, and after adoption to communicate said estimate to the Council of the City of New Orleans."

By Section 4 of said act the City Council of New Orleans was directed,

"after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of public schools,"

and

"for the purpose of said support *it shall levy a tax of not less than one-fourth of one per cent. on the taxable valuation of all property in the City of New Orleans.*"

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In compliance with the mandate of the Legislature the City Council did, during the years 1874, 1875, 1876, 1877 and 1878, levy a tax "of not less than one-fourth of one per cent. on the taxable valuation of all property in the City of New Orleans" for the support of the public schools. (Rec., pp. 41-43, 44.)

During the years in which this school tax was levied the City of New Orleans was in serious financial distress, and her Mayor and other public officials made strenuous efforts to retrench and economize in the expenditure of the city's money.

The then Mayor, Mr. Leeds, in a message to the City Council on December 21, 1875, said:

> "The experience of the past year clearly demonstrates that, unless taxation be reduced to an amount which will be within the ability of the taxpayers to meet, the means necessary to carry on the functions of government cannot be obtained. The ability to pay the existing rate of taxation has become each year less and less, indicating thereby that the amount exacted exceeds the net revenues of the community, deducting the sum necessary for its support.
>
> "A portion being thus taken each year from the accumulations of more prosperous times, the capital necessary for reproduction has been gradually curtailed and the revenues therefrom diminished year by year. Imperative necessity, therefore, demands relief for this overtaxed and oppressed people. *In view of which I recommend: (1) A strict scrutiny of all items of expenditure within your control, with a determination on your part to bring down the expenses of every department to the lowest possible point.* * * * (3) The withholding of the taxes for the public schools and the police until they shall be placed under the control of the city authorities, so that the ex-

penditures therefor can be reduced to the point demanded by the poverty of our people, and their management conducted in accordance with the views of those by whom they are supported, and for whose benefit they should be maintained.

"Both the schools and police, although municipal institutions, are, by existing laws, under the control of State authorities; they are managed with no regard to the sentiments or interests of the citizens who have been taxed for their support, and I cannot deem a law constitutional which would compel you to levy a tax for them contrary to the well-known wishes of your constituents. Indeed, a law which demands the levy of such a tax seems to me not only gross usurpation, but violative of the great American right of local self-government. * * *

"If, however, the School Board and the Police Board, two irresponsible bodies not chosen by the people or their representatives, are empowered to compel you to levy taxes not deemed by you in accordance with the wishes of the best interests of your constituents, thus virtually investing them with the prerogative of taxing those whom they do not represent, in violation of the sound maxim, 'No taxation without representation,' your refusal to be the interested agent of unjust laws throws the responsibility of this great wrong upon those who should bear it, and the people, informed of the true cause of their grievance, will be the better able to apply the proper remedy. *The expenditures of these two departments, whose management is so unsatisfactory to the large majority of our citizens, now exceeds one million dollars per annum, an amount, in my opinion, four hundred thousand or five hundred thousand dollars in excess of what they should be in our impoverished condition. This great extravagance, so destructive to the prosperity of the city and so unjust to the public creditors whose claims are postponed on account of the public necessity, and*

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whose interests must be seriously injured by any unnecessary outlay, indicates how dangerous it is to violate the fundamental principles of government, and demonstrates the necessity of preserving to the people the management of their own local affairs and the choice of their local officers."

Rec., pp. 45, 46, 47.

On January 4, 1876, Mayor Leeds sent the following message to the City Council:

> *"Under this system of centralization millions of dollars have been squandered, excessive taxes collected, and a great debt accumulated. And yet the school teachers and the policemen, who have been performing the labor under pretense of which these taxes have been imposed, complain that they do not receive the compensation to which they are entitled.* Year after year have our citizens hoped for relief, and time after time has the hope been disappointed. *An exhausted community, no longer able to endure this taxation, look to you, their chosen representatives, for relief."*
>
> Rec., p. 49.

Feeling strongly that the School Board was inordinately extravagant, and that the Legislature had set apart for its support an undue quantum of taxation upon the City of New Orleans, and feeling that the School Board was squandering the moneys so collected, the then Mayor of New Orleans vetoed the city ordinances levying the tax of one-fourth of one per cent. for school purposes during each year 1874, 1875, 1876, 1877 and 1878. (Rec., p. 48.) Notwithstanding the veto of one of the ordinances levying said taxes the City Council of New Orleans, during said year, passed said ordinance over the veto of the Mayor. (Rec.,

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pp. 42, 43, 44.) The record thus shows that during the several years in which these taxes were levied there was much publicity given thereto and great discussion incident to the imposition of the tax by the City Council. During these years the School Board furnished estimates of their probable expenses to the City Council as follows:

For 1874 the estimate furnished to the Council was ..... Rec., p. 75.	$456,100.00
For 1875 the estimate furnished to the Council was ..... Rec., p. 77.	486,500.00
For 1876 the estimate furnished to the Council was ..... Rec., p. 79.	408,820.00
For 1877 the estimate furnished to the Council was ..... Rec., p. 82.	408,600.00
For 1878 the estimate furnished to the Council was ..... Rec., p. 83.	303,688.00
Making a total of.....	$2,063,708.00

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The expenditures of the School Board during said years were as follows:

For 1874 the expenditures were..... Rec., pp. 74, 75.	$477,104.02
For 1875 the expenditures were..... Rec., p. 77.	460,929.70
For 1876 the expenditures were..... Rec., p. 79.	404,478.89
For 1877 the expenditures were..... Rec., p.82.	264,706.00
For 1878 the expenditures were..... Rec., p. 83.	297,932.00
Making a total of.....	$1,905,160.80

In the year 1874 it will be noted the School Board exceeded its own estimates and expended $21,014.02 thereover.

The City Council of New Orleans did not adopt the estimates submitted by the School Board, but took into consideration the public weal, the then condition of the city's finances, the oppressive burdens already oppressing the taxpayers, and levied the amount of tax rate made mandatory by the statute. The School Board, without reference to Section 10 of Act 36 of 1873, exceeded the revenues provided by the City Council, and, being unable to pay in cash some of its creditors, such as school teachers, porters and furnishers of supplies, issued to them certificates of indebtedness, which certificates are described in the record at page ——. These certificates of indebtedness are the contracts which relators urge have been impaired by subsequent legislation by the State of Louisiana and by the decision of the Supreme Court of Louisiana in the instant

case, and were issued for work performed or supplies during the years 1874, 1875 and 1876. Some of these contracts, as represented by certificates, but not all of them, were sued upon and reduced to judgments against the Board of School Directors of the City of New Orleans.

The City of New Orleans was made a party to these suits until the Supreme Court of Louisiana rendered judgment in its favor and forever determined that it was not liable as a debtor upon these certificates.

In *Labatt vs. City of New Orleans*, decided in 1886, the Court said:

> "Certificates of indebtedness issued by the Board of Directors of the Public Schools of the City of New Orleans during the years 1874, 1875 and 1876 are not evidences of debt against the city. Holders of such certificates have no other claim against the City of New Orleans beyond the right to participate in the unpaid portions of the taxes levied by the city, in obedience to law, for the respective years in which the certificates were issued; but they have no right to recover judgment against the city thereon."
>
> 38 An. 283.

In *Fisher vs. Board of Directors of the City Schools*, decided in 1892, the Court said:

> "The Board of Directors of Schools have authority to stand in judgment, to institute or to defend suits. A creditor of the School Board has no right of action against the City of New Orleans to compel the city to recognize the validity of his claim. * * * School certificates of indebtedness issued by the Board of Directors of the public schools for the years 1874, 1875 and 1876 are not debts of the City of New Orleans, and actions for the purpose of having them recognized as valid claims can be maintained against the School

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> Board, as it is authorized to pass on the validity of the evidence of indebtedness of everyone who alleges that he is a creditor."
>
> 44 An. 184 (10 South. 494).

In *Gasquet vs. Board of School Directors of City Schools*, decided in 1893, the Court said:

> "All questions as to the validity of the school certificates herein involved, as to the authority under which they were issued, and as to the right of the owner thereof to proceed against the School Board and recover the precise judgment herein asked, were settled by our decision in *Fisher vs. School Board*, 44 An. 184 (10 South. 494), and will not be reopened."
>
> 45 An. 342 (12 South. 506).

The questions of relators' rights were again gone into by the Supreme Court of Louisiana in the case of *Fisher vs. Board of School Directors*, 48 An. 1077 (20 South. 163), decided in 1896.

It appears, therefore, that relators' judgments and claims, which are made the basis for the present proceedings, are solely and entirely against the Board of School Directors. The Supreme Court of Louisiana not only decided that relators had no right of action against the City of New Orleans, but in all of the cases cited, *infra*, it held that the relators, as far as the City of New Orleans was concerned, were entitled only to the taxes collected by it out of the levies for the years in question.

> **"Hence, it is obvious that, under the provisions of Act 123 of 1874, as well as under the effect of the section of the act of 1873 just transcribed, the holders of school certificates can only look to the uncollected appropriations of the respective years for**

which the same have been issued. This shows the fullest extent of plaintiff's claim against the City of New Orleans, which is simply a collecting agency, owing no other account to the State or to any other authority, beyond an effort to collect and payment of the amounts collected."

Labatt vs. City of New Orleans, 38 An. 286.

"From this judgment the School Board and the Mayor of the City of New Orleans appealed. Plaintiff does not contend that her certificates are due by the City of New Orleans, but sues, she states in her brief, 'to have whatever claims she has against the school fund recognized and paid whenever the city is enabled to collect these funds.' "

Fisher vs. Board of Directors, 44 An. 185 (10 South. 502.

"There was no demand made against the City of New Orleans, and the city is in no way liable for the amount sued for by plaintiff. The intervention was, therefore, properly dismissed. The certificates owned by plaintiff were issued subsequent to the year 1872 and prior to January, 1879. Their status has been fixed by the decrees of this Court. *(Labatt vs. City of New Orleans,* 38 An. 289; *Fisher vs. School Board,* 44 An. 184 [10 South]; *Gasquet vs. School Directors,* 45 An. 342 [12 South. 506].)

"They are payable only out of the revenues of the years for which they were issued, and only when said revenues are collected, and in the manner therein provided."

Fisher vs. School Directors, 48 An. 1077 (20 South. 163).

"They are payable only out of the revenues of the years for which they are issued, and only when said

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revenues are collected, and in the manner therein provided; and the act further declared that 'no writ of *fi. fa.* or mandamus shall lie for seizure of any school moneys, or to direct or enforce its paying out otherwise than in the manner and sequence required in this act.'

"This law formed a part of the contracts out of which the claims arose and deprived the claimants of any legal remedy to enforce payment except out of particular revenues when actually collected and covered into the treasury."

Gasquet vs. Board of Directors, 45 An. 342 (12 South. 506).

"Now, the relators have no judgments against the city, and it is shown in *Labatt vs. City of New Orleans* that the relator's claims are not, and cannot be made, a debt of the city. Besides this, in the case of *Fisher vs. School Directors,* 44 An. 184 (10 South. 494), which was a suit by the relators herein to establish their claims, being the same claims now merged into a judgment in the Circuit Court, which is the basis of the present suit for a mandamus brought against the Board of School Directors, and, by way of obtaining recognition of the claims, also against the City of New Orleans, it was expressly adjudged that the claims in question were in no sense debts or liabilities of the City of New Orleans, and this judgment in favor of the city is *res judicata.*"

U. S. ex rel. Fisher vs. Board of Liquidation, 60 Fed. Rep. 391.

In 1886 holders of these certificates sued the City of New Orleans to have said certificates converted into bonds of the City of New Orleans, to be issued under provisions of Act 67 of 1884, amendatory of Act 133 of 1880, but the Supreme Court of Louisiana, in the case of *Labatt vs. New*

Orleans, 38 An. 283, held that portion of Act 133 of 1880 unconstitutional.

In 1896 holders of these certificates sued the Board of School Directors for the purpose of having their certificates paid out of the surplus of the fund levied by the City of New Orleans under Act 136 of 1894, and the Supreme Court in the case of *Fisher vs. School Directors*, 48 An. 1077 (20 South. 163), held Paragraph 4, Section 1, of Act 136 of 1894 to be unconstitutional.

The Supreme Court of the State of Louisiana invariably held that the holders of these certificates, speculators and brokers, were entitled to judgment against the Board of School Directors, and to be paid out of the taxes collected from the levies of taxes for school purposes prior to 1879, but constantly held that the holders of these certificates of indebtedness could not obtain judgment against the City of New Orleans, and that the City of New Orleans was only liable as a trustee, or stakeholder, of the taxes collected under the levies of school taxes during the years in question.

In 1892 these relators brought suit in the Federal Courts against the City of New Orleans for an accounting of the taxes she collected for the years 1874, 1875, 1876, 1877 and 1878, and obtained judgment against the City of New Orleans for over ninety-one thousand dollars. This case went to this Court, which upheld the judgment of the lower Court.

John Fisher, Tutor, etc., et al. vs. City of New Orleans, 180 U. S. 185 (45 Law Ed. 485).

In that case this Court said:

> "The city occupied the position of agent of the School Board to collect and pay over school taxes, as held in *Labatt vs. New Orleans*, 38 An. 283; yet it may fairly be said that, under the legislation upon the subject, it was not the duty of the city to pay the money over

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immediately, but only as occasion might arise, and that, as no charge of fraudulent conversion was made, interest would not commence to run until after failure to pay when required to do so, or failure to account on demand. * * *

"In view of the acquiescence of the School Board in the retention by the city of the interest collected on school taxes (an acquiescence in good faith so far as appears), the attitude of the city as a public corporation, and the lack of averment or evidence of demand prior to the filing of the bill, or of effort to compel an accounting, we think that interest should not be allowed in this case prior to May 11, 1896."

The foregoing decision marks the last step taken by these relators against the City of New Orleans prior to the institution of the present proceeding. It must be admitted, because it cannot be denied, that the City of New Orleans has not converted to its own use or diverted from these relators one modicum of the funds of which she was declared to be *cestui que trust*, but, on the contrary, that she has accounted, dollar for dollar, for taxes that she has collected for the years in question and has turned same over to these relators. Nor has the city, in this or any other proceeding incident to this litigation, been charged with fraud or breach of trust.

The record shows that neither these relators nor the School Board ever protested to the City Council, at the time that these taxes were being levied or since, that sufficient revenues were not provided. Nor does the record show that in any of the numerous litigations against the School Board or the city have these relators ever asserted, up to the time of the present suit, that the City of New Orleans was liable for their judgments and claims, and compellable to levy an additional tax therefor under Act 36 of 1873, page 73.

BRIEF OF THE ARGUMENT.

I.

(a) That the levy of a greater rate of taxation than one-fourth of one per cent., under Act 36 of 1873, page 73, was discretionary with the City Council.

(b) That such legislative discretion cannot be controlled by the Courts.

(c) That, having exercised such discretion and complied with the mandatory part of the statute by levying one-fourth of one per cent., the power of taxation vested in said City Council has been exhausted and is ended.

II.

(a) That, even if relators or the School Board ever had a right to mandamus the city to levy an additional tax, they have lost said right by their silence, acquiescence and laches of over thirty years.

(b) That no explanation of said laches is alleged in plaintiff's petition, and their silence and acquiescence in the tax as levied is unexplained and inexcusable.

(c) That relators have not alleged or shown that respondents have interposed any hindrance or impediment by fraud, concealment or otherwise to prevent them, heretofore, from asserting their rights.

(d) That an entirely new generation of citizens and taxpayers have come into existence since 1878, who should not be made to bear the burden of their authors.

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III.

(a) That the School Board and these relators violated Section 10 of Act 36 of 1873, page 73, the one by exceeding its revenues and the other by their acquiescence and want of heed, and, hence, by the terms of the statute, have lost and forfeited their rights to any additional tax to pay their claims.

(b) That the violation of Section 10 of Act 36 of 1873, page 73, by the School Board and its creditors, constitutes a peremptory legislative estoppel against both in this action.

IV.

(a) That relators' only remedy is against the City of New Orleans as a trustee of the tax fund in question, and their right of action only extends to compelling her to faithfully collect, account for and turn over said moneys; and, if she fails to do this, a suit against her for damages for a violation of the trust.

(b) That these relators have no right to a writ of mandamus for an additional tax to make up the deficit of uncollected taxes.

ARGUMENT.

I.

Interpretation of Act 36 of 1873, page 73, and the City Council's discretion with reference thereto.

"SEC. 2. *Be it further enacted, etc.*, That, as soon as practicable after the passage of this act, the Board of Directors for the City of New Orleans shall adopt

an estimate of debt and expenditures for the year 1873, and thereafter, during the month [of] October in each year, the board shall in like manner adopt and communicate to the Council of the City of New Orleans an estimate for the year commencing on the first of January next ensuing."

"SEC. 4. *Be it further enacted, etc.*, That the Council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of public schools, in addition to those required in Section 3 of this act to be made for the preservation of city property. For the purpose of such support it shall levy a tax of not less than one-fourth of one per cent. on the taxable valuation of all property in the City of New Orleans, and no provision in any general or special law limiting the aggregate power of taxation of the City of New Orleans, or of the Council, shall prevent the levying of at least one-quarter of one per cent. per annum for school purposes. The tax herein required to be levied for the year 1873 shall be in addition to the taxes levied by the Council in the month of December, 1872, and collectible therewith."

Act 36 of 1873, page 73.

The city's contention is that, under the terms of this act, the City Council of New Orleans was obligated absolutely to levy a tax for the support of the public schools of not less than one-fourth of one per cent. on all of the taxable property in the city, and it was a matter of legislative discretion for it to determine as to whether it should levy any greater rate than the minimum established by the statute. The statute does not establish any maximum rate within which the Council must confine itself, so that, if any unlimited rate of taxation was granted to the City Council, the discretion to exercise the right to levy any portion

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of the unlimited grant of power above one-fourth of one per cent. was a matter of legislative discretion vested by the Legislature in the City Council. The tax rate being only fixed definitely at one-fourth of one per cent., the power to make it more than one-fourth of one per cent. must reside somewhere and with somebody. It either rested, in this case, with the School Board or with the City Council. The School Board, under Act 8 of 1871, page 42, Section 7, seemingly had such power to determine for itself the amount of revenue it could expect for school purposes, which would be binding on the City Council. That section reads as follows:

> "SECTION 7. *Be it further enacted, etc.*, That the Board of School Directors for the City of New Orleans shall, immediately upon their organization, and also at the commencement of each year thereafter, ascertain the amount of funds necessary to carry on the schools under their charge for the current year, and report the same to the Board of Administrators of the City of New Orleans, who shall, at such time as they may deem necessary, levy the amount on the taxable property of the city, and direct the same to be collected in the manner and at the time by them deemed most desirable, but the time shall not exceed six months from the date of their notification of the amount required."

By the terms of this act the School Directors had the power to "ascertain the amount of funds necessary to carry on the schools," and it was the duty of the City of New Orleans to "levy the amount on the taxable property of the city." But in 1873 the Legislature of the State did not provide for the public schools in this manner, and it did not grant absolutely to the School Board the power to deter-

mine the quantum of revenue which it could expect, but studiously avoided doing so. By Act 36 of 1873, page 73, Section 2, the School Board had power, and it was its duty, to adopt an estimate of debt and expenditures, and to communicate said estimate to the City Council; and by Section 4 of the act the City Council, after receiving the estimate, must proceed to make provision for the support of the public schools, and to this end it is made its duty to levy a tax of not less than one-fourth of one per cent. on the taxable valuation of all property in the City of New Orleans. The Legislature in 1871 gave the School Board an unlimited power to determine the amount of its revenues, and made it the duty of the city to raise such revenues; whereas, the act of 1873 only gives the School Board the power to file an estimate as a guide to the City Council, and grants to the latter the power to scrutinize said estimate, and then make provision for the support of the schools. The Legislature did not intend to grant to the School Board the power to fix its own revenues because it did not so direct, as it did in 1871, and the Legislature did intend to grant such power to the City Council because it does say so, and because, if it did not intend to grant such power to the City Council, it would not have fixed a minimum rate of taxation that the Council must levy. It would have merely directed the City Council to levy a tax sufficient to cover the School Board's estimate, as it did in 1871, leaving no discretion to the Council.

It may be reasonable to conclude that the Legislature believed that it had granted the School Board sole control over its revenues, and the power to raise same, in 1871, and that it had intended to restrict the power of the School Board in 1873, not by vesting in the City Council entire control

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over the School Board's revenues, because the City Council might then appropriate so little for school purposes as to destroy or impair the school system, but by fixing a minimum rate of taxation—*i. e.*, one-fourth of one per cent.—so that the school system would at least obtain revenue sufficient for its purposes, and at the same time vest in the City Council the power to restrain school expenditures within proper and legitimate bounds.

> "A change of phraseology of a statute re-enacted creates a presumption of change of intent of the legislative body from that expressed in the former statute."
> *Crawford vs. Burke*, 195 U. S. 176.

The power to levy taxes is a legislative power, and in municipal corporations it resides with the City Council. It is the duty of City Councils to receive estimates of probable expenses from all of the municipal departments, as those departments are better able to estimate and ascertain their probable expenses than is the City Council. It is evidently upon this sound principle of government that the Legislature acted when it directed the School Directors to make an estimate and to submit it to the City Council. It is perfectly evident also that the City Council had the power to scrutinize such estimate and to adopt it or not; provided, always, that it complied with the mandate of the Legislature by levying not less than one-fourth of one per cent. If this were not the case it would be impossible for a city to run its affairs in an orderly and economical manner. If the Legislature gave every department of the municipal government the right to fix arbitrarily its revenues, without a general supervision by some one department, the result would be chaos, and such government would be tyranny. This interpretation of the act is strengthened by

a reading of Section 10 thereof. If the School Board, as contended by relators, had the power to estimate their necessary expenses, and it was the arbitrary duty of the City Council to adopt the estimates without consideration, debate or the exercise of discretion, and in compliance with such ministerial duty levy a tax sufficient to meet said estimates, such a construction would absolutely wipe out of the statute Section 10. If the School Board fixed its own revenues and the City Council levied a tax up to the amount of these estimates, what is the necessity for, and what becomes of the provisions of Section 10? The Legislature did not intend to do a vain thing by writing it into the statute, and the Courts will consider all parts of a law in order to ascertain the legislative intent.

> *Kohlsalt vs. Morphy*, 96 U. S. 153 (24 Law. Ed. 844); *Heigenfeldt vs. Dancy Gold & L. Mining Co.*, 93 U. S. 634 (23 Law. Ed. 995).

This section absolutely destroys the theory and argument of the relators that the City Council was without discretion and that the School Board had the absolute power to determine the amount of its income, which would be binding on the City Council. Section 10 reads as follows:

> "SEC. 10. *Be it further enacted, etc.*, That the Board of Directors of the Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act or other schools laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenues shall have been provided to satisfy the claims; otherwise, they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt."

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Hence, it was the duty of the School Directors to limit their expenditures to the amount of revenue provided by the City Council.

Our construction was adopted by the City Council, and it was never questioned during any of the years in which these taxes were levied by either the School Board or its creditors, although the subject every year was a matter of public discussion and great public interest. The Mayor of the city, in public messages to the Council, directed their attention to the extravagant expenses of the School Board, warning them of the necessity to retrench and economize. Some of the ordinances levying the taxes were vetoed by him, and the Council passed the ordinances over his veto. Thus the question of the discretion of the Council to levy these taxes, their validity, and the amount of taxes which they should levy, was a question of great import at the time, and the fact that the Council levied the minimum rate fixed by the statute must have resulted from a desire to retrench and economize generally the public expenses, as the City of New Orleans at that time, as shown by the record, was in dire financial straits. This construction has prevailed down to the time that this suit was brought, and it has never been questioned heretofore. The record speaks of no protest made by the School Directors to the Council to levy a larger rate. No petition of the School Board for this purpose appears, and if the School Board and its creditors were unsatisfied with the rate levied by the Council, and, if they required more revenue, it was their statutory duty in order to conserve their rights to do so at that time, and in those particular years, under Section 10 of Act 36 of 1873, page 73, or forfeit and lose their rights and forever after hold their peace. During over thirty years the School

Board and these relators, by their utter silence and plain acquiescence, have recognized this construction.

In all of the litigation which has resulted from this tax against the School Board, no protest, no allegation, no expression in brief or argument, has ever been urged against this construction. In point of fact neither the School Board nor these relators have ever, heretofore, asserted that they were entitled to a greater rate of taxation than one-fourth of one per cent., and that the City Council should have adopted their estimates as submitted, and levied a tax commensurate with their amount, even although such tax would be greater than one-fourth of one per cent.

> "A uniform construction ever since its enactment for a long period—in this case over thirty-five years—engenders doubt of a new and different construction."
>
> *Merchants' Nat. Bank vs. United States*, 214 U. S. Rep. 34.

> "Usages long established and followed have, to a great extent, the efficacy of law in all countries. They control the construction, and qualify and limit the force, of positive enactments."
>
> *Slidell vs. Grandjean*, 111 U. S. 412 (28 Law. Ed. 321).

> "The construction given to a statute by those charged with the duty of executing it ought not to be overruled without cogent reasons."
>
> *U. S. vs. Moore*, 95 U. S. 760 (24 Law. Ed. 588); *Brown vs. U. S.*, 113 U. S. 568.

While it is true that the Board of School Directors was technically, under Act 36 of 1873, a distinct corporate entity, separate and apart from the City of New Orleans *(Labatt vs. New Orleans*, 38 An. 285), nevertheless, broadly

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speaking, it was a department of the City of New Orleans, depending for its support upon taxation levied upon the people of New Orleans. Hence, it should be considered, with reference to its revenues, as part and parcel of the city, and, under the law creating it, the City Council should be considered as having all the legislative powers over it that it had over other departments of the municipal government; provided, always, that the City Council did not disregard the legislative mandate by not levying at least one-fourth of one per cent. for its support.

City Councils, within the scope of their delegated functions, have the same discretion as deliberative bodies of higher rank.

> "The City Council of New Orleans is, to a limited extent, clothed with legislative authority, and it is vested with that discretion within its powers given to all legislative bodies."
>
> *State vs. Heidenheim*, 42 An. 486 (7 Sou. 621).

> "Powers conferred upon municipal corporations are, as we have heretofore seen, of two general classes —the one mandatory, the other discretionary. Discretionary powers are not, unless in extraordinary and exceptional instances of gross abuse, subject to judicial control; but duties imperatively enjoined may, as we have just shown, be enforced by mandamus. The general rule is this: If the inferior tribunal, corporate body or public agent or officer has a discretion, and acts and exercises it, this discretion cannot be controlled by mandamus; but if the inferior tribunal, body or officer or agents refuse to act," etc.
>
> Dillon on Municipal Corporations, Vol. 2, Sec. 832.

> "Recurrence to the general principles already stated will make it plain that mandamus is not a proper rem-

edy for a failure in the performance of political duties, or for errors, intentional or otherwise, in their performance. Such duties are always confided to the political sense and political judgment of the people or their representatives, and their reasons for any particular action or failure to take action cannot, in general, be inquired into. If, therefore, the people of a township, or the proper board having the power, shall fail to vote such taxes as seem to be needful, the Courts cannot interfere by mandamus. If they could do so it would be the Courts, and not the people, who, in effect, would exercise the local political authority."

Cooley on Taxation, Vol. 2, pp. 1359, 1360.

"Mandamus never lies to coerce the performance of legislative duties, either by the Legislature of the State or by any inferior and subordinate body; not only because legislation is foreign to judicial duties, but also because, in its nature, legislative action is discretionary."

Cooley on Taxation, Vol. 2, p. 1368.

In *City of East St. Louis vs. United States* this Court said:

"The question, what expenditures are proper and necessary for a municipal administration, is not judicial. It is confined by law to the discretion of the municipal authorities. No Court has the right to control that discretion, much less to usurp and supersede it. To do so in a single year would require a revision of the details of every estimate and expenditure based upon an inquiry into all branches of the municipal service; to do it for a series of years, and in advance, is to attempt to foresee every exigency and to provide against every contingency that may arise to affect the public interest."

110 U. S. 321 (28 Law. Ed. 162).

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"The passage of ordinances by municipal bodies by virtue of powers delegated by the Legislature are legislative acts which courts of equity will not enjoin."

New Orleans Waterworks Company vs. New Orleans, 164 U. S. 471 (41 Law. Ed. 518).

In *United States vs. Guthrie* the Court said:

"The only acts to which the power of the Courts by mandamus extends are such as are purely ministerial, and with regard to which nothing like judgment or discretion in the performance of his duties is left to the officer, such as are required of the individual rather than of the functionary."

58 U. S. 106 (15 Law. Ed. 102).

In further support of the position that, when a statute gives discretion to a City Council to levy a tax, when the Council has levied a tax in such amount as the Legislature demanded as a minimum, any further levy is within the discretion of the City Council, we submit the following authorities:

Application for Mandamus vs. School Commissioners, 4 Am. Rep. 163.

Commonwealth vs. Commissioners, 5 Binn. 536.

Commonwealth vs. Cochran, 6 Binn. 456.

People vs. President and Trustees of Brooklyn, 1 Wind. 318.

People vs. Supervisor of Albany, 12 Johns. 414.

State vs. Washington County, 2 Chand. (Wis.) 247.

U. S. vs. Seaman, 58 U. S. 226 (15 Law. Ed. 420).

In *Heinie vs. Louisiana Levee Commissioners*, 86 U. S. 655 (22 Law. Ed. 223), the Court said:

> "The power of taxation belongs to the legislative department of the Government, and the judicial department has no general jurisdiction over the subject; but, if officers who are charged with the duty of laying or collecting taxes refuse to perform their functions, the Courts, in a clear case of failure, and at the instance of a party directly interested, can, by the prerogative writ of mandamus, compel them to perform acts which are ministerial, as distinguished from those which are judicial or discretionary."

In *United States vs. City of New Orleans* this Court said:

> "Mandamus will not issue to compel officers of a municipal corporation to levy and collect taxes, unless the Legislature has, either expressly or by implication, made it the duty of the officers to levy and collect it. The Courts can enforce, but cannot create, local duties."
>
> 98 U. S. 321 (25 Law. Ed. 225).

> "Mandamus will lie to compel the proper authorities to raise by taxation the necessary and proper amount for school purposes, as determined by the Board of Education, *where the determination of the board is binding*, or to otherwise perform specific duties imposed by law with respect to the levy and assessment of taxes for such purposes; but, of course, the writ will not lie to compel taxation not authorized by law or in excess of the limit prescribed by law, *or to control a discretion vested in an officer or board.*"
>
> Cyc. of Law and Procedure, Vol. 26, p. 331.

The authority for the above text is the case of *State vs. Omaha*, 39 Neb. 745 (58 N. W. 442). This case involves the same proposition as the case under discussion, except that

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our position is even stronger. The statute in the Omaha case is as follows:

> "That the Board of Eduction shall annually during the month of January report to the City Council an estimate of the amounts of funds required for the support of the schools, for the purchase of school sites and the erection and managing of school buildings, the payment of interest on all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness, and the City Council is hereby authorized and required to levy and collect said amounts, the same as other taxes."
>
> Camp. Statutes, Chapter 79, Subdivision 17, Section 21, Neb.

A comparison of this statute with Sections 2, 4 and 10 of Act 36 of 1873, page 73, will demonstrate that far greater latitude and discretion was vested in the City Council in the instant case than in the case which we are now citing. The Nebraska Supreme Court, in construing this statute on a mandamus application for an additional tax for school purposes, in this well-reasoned opinion said:

> "The question presented is simply this: Does the law empower the Board of Education to determine the amount necessary to raise by taxation and the levy required therefor, and compel the Council, acting ministerially, to make a levy sufficient to provide the amount so determined? Or, on the other hand, is the board simply authorized to report to the Council the whole sum required for school purposes, leaving with the Council, in the exercise of its discretion, the power to determine what part of that sum must be raised by taxation, and what levy will be sufficient for that purpose?
>
> "The argument made on behalf of the relator is very able and demands close consideration. It is argued that the manifest intent of the statutes relating to the

schools is to vest in the school district, through its Board of Education, sole legislative power. By the act relating to the schools in metropolitan cities (being Subdivision 17 of Chapter 79, Compiled Statutes, already referred to) the school district is constituted a body corporate. The title to all school property is vested in the district. The Board of Education is given exclusive control of the property for all the purposes contemplated in the act. All schools are placed under the direction and control of the Board of Education. The affairs of the school district are to be conducted exclusively by the Board of Education, except as otherwise provided in the act. The board is required to provide for the payment of the indebtedness of the school district, including the bonded indebtedness. Different qualifications are provided for electors of the school district than those required for general electors of the city. The Board of Education canvasses the vote at school elections. The board disburses school funds, and, in general, it is clear that it was the policy of the law to make the school district independent of the city government so far as practicable. These features, however, existed in the act of February 6, 1873, providing for public schools in cities of the first class.

"*State vs. Mayor and Council of the City of Omaha*, 7 Neb. 267, was a case precisely like the one at bar, arising under the act of 1873, Omaha being then a city of the first class. The report of that case contains no adequate statement of facts, and the language of the opinion lacks certainty, owing to the want of such a statement, but a reference to the briefs in the case shows that all the arguments here advanced by the relator were presented in that case, and all the authorities now called to our attention were there cited. The conclusion there reached was that the power of the board was merely to report an estimate of the funds required; that the board had no power to levy a tax, but that it was for the Council, in the exercise of its discretion, to make such levy, and the writ was accordingly denied.

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The statute there under consideration differed from the one here invoked only in one respect. The language of that statute was: 'The City Council is hereby authorized and required to levy and collect the necessary amount, the same as other taxes.' Here the language is 'said amounts.' In the brief on behalf of relator in the former case it was argued that the terms 'amounts of funds required' and 'necessary amounts' were synonymous, and we think that such argument was sound so far as applied to those particular expressions. The necessary amount can neither be more nor less than the amount required, so we cannot see that the expression 'said amounts,' if it should be construed as referring back to the expression 'amounts of funds required,' can be given any different construction than the term 'necessary amounts' used in the other statute. This being the only difference between the statutes applicable in the former case and in that now before us, it would seem that the former case should be treated as a decision controlling us here. Owing, however, to the uncertainty of the published report of the case in 7 Neb., an uncertainty which has led to continued litigation upon this question, we think it proper to pursue the subject further.

"In this State taxation of property within the school district is not the only source of income for the support of the schools. In fact, if the estimate presented by the Board of Education to the City Council in this case approaches accuracy, the school tax forms but a small portion of the school fund. All license fees go to that fund, estimated in this case at $220,000. So do all fines arising out of the Police Court, estimated at $25,000. From the State apportionment of the school funds a further estimate is made of $60,000. The statute does not require the Board of Education to estimate the amount of funds to be derived from sources other than taxation and to report to the City Council simply the amount required to be raised by taxation, but requires an estimate of the whole amount required for the support of the

schools and other purposes specified in the act. We think the obvious purpose of the act was to require an estimate to be made and reported to the Council of the character designated in the act—that is, of the total amount of funds required for the different purposes—and that it was intended that the Council should, having received this estimate, for itself determine what amounts would probably be realized from sources other than taxation, and then determine what taxes it would be necessary to levy in order to provide the Board of Education with the total amount estimated by it as necessary. It is true that in regard to some of the sources of revenue the Board of Education has facilities equal to those of the Council for forming an estimate. This is not, however, in all cases true. All fines and licenses go to the school fund, and the Mayor and Council have authority, by ordinancec, to impose certain licenses, and, to a certain extent, in the exercise of their legislative powers, to fix the amount of the fines collectible. Further, it must be borne in mind that the act relating to schools in metropolitan cities is, in all essentials, a copy of the act of 1873 relating to schools in cities generally, and that that act was in effect during a period when Councils also had the power of granting saloon licenses. In metropolitan cities this power is now committed to the Board of Fire and Police Commissioners, but the Mayor and Council may still fix within the limits of the statute the amount to be paid for such licenses. For this reason the Mayor and City Council, and not the Board of Education, is the body in the best position to estimate the receipts of the school district, and so to determine the amount necessary to raise by taxation, and this fact is important in ascertaining the legislative intent in regard to the statute we are now considering.

"Our attention is called to several cases which, it is claimed, sustain the position of relator. The first of these is *Ex parte the Common Council of Albany*, 3 Cow. (N. Y.) 358. In that case it was held that the

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Council could by mandamus compel the supervisors to levy a tax sufficient to raise the sum reported by the Council as necessary for the support of the poor. But the statute there committed to the Council the power to determine the sum necessary 'to be raised by taxation' for that purpose. In *People vs. Bennett,* 54 Barb. (N. Y.) 480, a mandamus was granted to compel the levy of a school tax for Saratoga Springs, but it does not appear that the Board of Education had any other source of income than the tax, and the statute required the trustees of the village to raise and collect by tax such sums as 'the Board of Education should deem needful.' In *State vs. Smith,* 11 Wis. 65, a similar mandamus was allowed, but there the charter of the city expressly required the Council to raise by taxation 'such sums as may be determined and certified by the Board of Education to be necessary and proper,' in addition to the amount of moneys appropriated or provided by law. In all these cases the statute was explicit, and clearly left to the levying body only a ministerial duty to perform. Were our statutes as plain, or were taxation the sole source of income, we might adopt a similar view, but we think that it was intended by our statute merely that the Board of Education should notify the Council of the total amount required, and that to the Council is committed a discretionary authority to estimate the receipts from different sources, and for itself determine what tax will be necessary to make the total income sufficient to provide the total amount reported by the board."

See also *Washington vs. Mutty,* 39 Wash. 624 (82 Pac. 118).

In the case of *State vs. City of New Orleans,* 37 An. 894, the Court said:

"The relators rely on the Act of 1877, but that act, in empowering the board to protect the health of the city, restricted its authority to incur expense to the assent and concurrence of the Council, and made it the

> duty of the board to report to the Council annually an estimate of the probable sum required to meet its expenses, and then obliged the Council, after considering that report, to make such appropriation as by it may be deemed necessary. (Acts of 1877, p. 118.) Discretion was lodged in the Council as to the sum, and the board had no control over it. It could not be otherwise, for in no other way could the Council protect its revenues."

This being the state of the law, we rely with confidence upon the proposition that these relators have not shown that their contract rights were impaired by any subsequent legislation by the State of Louisiana, and that the Supreme Court, in the instant case, *Fisher vs. Mayor and Council of the City of New Orleans,* 121 La. (Rec., fol. 762), by its construction of Act 36 of 1873, page 73, has not impaired the obligation of these contracts, but, upon the contrary, has merely placed upon this statute a natural and reasonable construction made necessary from a reading of the act itself.

Before leaving this branch of the case we wish to differentiate the propositions involved here from those which arose in the case of *Louisiana ex rel. Hubert vs. Mayor and Council of New Orleans,* lately decided and reported in the 215 U. S., page 170, as relators seem to rely principally upon this case for a reversal of the decision of the Supreme Court of Louisiana in the instant case, and have striven to liken that case to the case at bar. This is impossible. The pith and marrow of the *Hubert case* is:

> "The city levied, and afterwards collected, taxes for the benefit of the Metropolitan Police Board. The Police Board had issued its outstanding warrants for salaries, etc., upon the faith of the exercise of the taxing

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> power for their payment. The contract creditors of the Police Board were entitled to rely upon the benefit of the laws imposing taxation to make their obligations effectual. They could not constitutionally be deprived of such benefit. While it is true that the Police Board made contracts, the only means of keeping them was through the exercise of the power of taxation conferred by law upon the city. The city exercised this power as required by law, levied and collected the taxes, but applied them to other purposes, and has failed to turn them over upon demand. We think the power to levy this tax still exists. As to the creditors deprived thereof by the action of the city, it is as though such power had never been exercised. The city still has the power to levy these taxes for the benefit of the persons for whom they were intended and who had a contract right to the exercise of the remedies for the satisfaction of their claims by the levy and collection of taxes existing when their debts accrued, which right could not be taken away from them by subsequent legislation."

The state of facts here are radically different from those in the *Hubert case.* In the *Hubert case* the city had levied and collected the taxes, and, acting under subsequent legislation in her favor, had diverted these taxes to her own purposes, thereby depriving the creditors of the Metropolitan Police Board of their rights. In this case the city levied the taxes and has accounted to the School Board and its creditors for every dollar that it has collected. It did not divert one penny from the School Board or its creditors, and stands before this Court with absolutely clean hands. These facts are admitted, are established by the record, and cannot be denied, and we submit that, the facts being as disclosed by this record, a grave doubt exists as to whether there is any Federal question involved in this case which

would give this Court jurisdiction under a writ of error. A question of jurisdiction can be raised at any time.

Hubert vs. Mayor and Council of New Orleans, 215 U. S. 170; *Bacon vs. Texas,* 163 U. S. 207; *McCullough vs. Virginia,* 172 U. S. 102-116.

Relators also rely upon the case of *Labatt vs. New Orleans,* 38 An. 286, quoted in their brief at page 27, for authority for their position that the City Council was bound to receive their estimate and levy a tax equal thereto. This case does not support their position. It is not even *obiter dicta,* and the question was not presented to that Court in that case or in any other case; and the Supreme Court of Louisiana in the cases of *Labatt vs. New Orleans, Fisher vs. School Board* and *Gasquet vs. School Board,* cited *infra,* all limit the rights of these relators, as against the City of New Orleans, to the taxes collected, or which may be collected, under the levies for the years 1874, 1875, 1876, 1877 and 1878.

How can relators find comfort in the opinion of the Supreme Court of Louisiana in the *Labatt case?* On the application for rehearing that Court distinctly held:

> "It is the more unfortunate from the fact that we had labored with great pains and caution to impress in our opinion the undisputed theory that there was no earthly privity between the City of New Orleans and any holders of school certificates, who were exclusively creditors of the School Board, and not of the city.
>
> "We have been unfortunate in the use of language if our utterance can be fairly construed to mean that any certificate holder could personally enforce any claim against the city for uncollected appropriations of the respective years for which his certificates had been

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issued. We had thought that the formal declaration that the city was but a collecting agent, owing no account to the *State or any other* authority beyond an effort to collect,' etc., would leave no doubt of our real meaning, which was that the right to urge any claim for collected or uncollected balances on any one of or the three years' appropriations rested in the State or the School Board only, and that the funds thus received would be distributed *pro rata* among all the holders of valid school certificates.

"We can but repeat our unshaken conclusion that the school certificates for the years 1874, 1875 and 1876, which are yet outstanding and unpaid, never have been a part of the valid floating indebtedness of the City of New Orleans, and that no constitutional legislative enactment thus far adopted has had the legal effect to make them debts of said city. Hence, the holders of such certificates can under no possible contingency obtain, through the Courts of this State, valid judgments therefor against the City of New Orleans."

38 An. 290.

II.

That, even if relators or the School Board ever had a right to mandamus the city to levy an additional tax, they have lost said right by their silence ,acquiescence and laches of over thirty years.

We do not admit, except for the purposes of argument, that relators ever had a right to the levy of a tax greater than that actually levied by the City Council for the years prior to 1879; but we assert with confidence that, if they ever had such right to an additional tax, irrevocably they

have lost that right by silence, acquiescence and laches. Be it ever remembered that Section 10 of Act 36 of 1873, page 73, was a statutory recognition of the maxim that "the law favors the vigilant," and it was a warning, both to the School Board and to its creditors, to

> "take heed that due revenues shall have been provided to satisfy their [the] claims; otherwise, they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof; and that the board shall not exceed its powers in the incurring of debt."

Notwithstanding this plain provision of law the School Board and its creditors year by year stood by, and, without protest or petition, silently and acquiescently permitted the City Council of New Orleans to levy one-fourth of one per cent. for the support of the public schools of New Orleans, although the very taxes in question were the subject of discussion in the City Council during all these years, the Mayor having denounced them and vetoed one of the ordinances levying them, which was passed over his veto.

If the School Board or these relators ever had a right to the levy of an additional tax rate they should have spoken during some one of these years, and not only as a voice out of the deep after the lapse of over three decades. Their answer to the defense of laches is a confession of negligence and ignorance. They say (relators' brief, p. 8; tenth assignment of error, Rec., p. 137) as follows:

> "It was impossible for petitioners to have asked for the levy of the tax sooner, for the reason that the amount of deficiency had to be ascertained so as to fix the rate required for the levy of the tax necessary to pay your petitioners; that the amount of deficiency was only fixed after the decision rendered by the Su-

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preme Court of the United States in the case of *Fisher vs. City of New Orleans*, decided in 1901, No. 281 of the October term, 1899."

Complainants are held to diligence in their efforts to ascertain facts, and means of knowledge for over thirty years must be held to be the same as actual knowledge.

Norris vs. Haggin, 28 Fed. 275; *Grymes vs. Sanders*, 93 U. S. 55 (23 Law Ed. 798); *Mudsill Min. Co. vs. Watrouse*, 9 C. C. A. 415 (22 U. S. App. 12; 61 Fed. 163); *Badger vs. Badger*, 69 U. S. (2 Wall.) 87 (17 Law. Ed. 836); *Wood vs. Carpenter*, 101 U. S. 141 (25 Law. Ed. 808); *Graham vs. Boston H. E. R. Co.*, 118 U. S. 167.

The relators were at all times in a position to ascertain the facts which they now present to this Court. At any time since 1878 the facts could have been obtained from the city's books in the Comptroller's office. The facts which are spread upon this record were taken, and only taken, from the Comptroller's books, and they have been a part of the archives of his office since 1878, so that relators could have ascertained, by reasonable diligence, practically the exact difference between the estimates of the School Board and the amounts realized from the levy of the one-fourth of one per cent. tax. The School Board could have estimated, for all practical purposes, the difference between their estimates and the amount which would be derived from the one-fourth of one per cent. tax levied by the City Council. In order to do this it was merely necessary for them to ascertain the total assessed value of the property in the City of New Orleans and calculate the amount which would be realized by a tax thereon of one-fourth of one

per cent., allowing a reasonable percentage for uncollected taxes. It was not necessary for the School Board or its creditors to know to a cent or a dollar the difference between the estimates and the tax realized by the levy of the City Council. All that it was necessary for them to know to a reasonable extent was what the difference really was in order to mandamus the city for an additional tax levy. This information was always accessible.

Relators further seek to excuse themselves for laches upon the ground that they have been busy litigating with the School Board and the City of New Orleans since 1890, and, hence, they have not slept upon their rights. It is true that they have been litigating with the School Board, principally, and with the City of New Orleans; but it is not true that they have been litigating with the City of New Orleans or ever heretofore asserted a right as against the City of New Orleans for an additional levy under the act of 1873. Their litigation with the School Board and the City of New Orleans has been solely with reference to the taxes that were uncollected from time to time under the tax levies in question in this suit. These relators never in any of their litigation, referred to at large in this brief, asserted that they were ever entitled to an additional tax levy. *Complainants are required by this Court to allege and prove satisfactory reasons or excuses for long delay.*

> *Badger vs. Badger*, 2 Wall. 87 (17 Law. Ed. 836); *Godden vs. Kimmell*, 99 U. S. 201 (25 Law. Ed. 431).

No allegation appears in relators' petition for this writ explaining or excusing the reasons for their delay, and no proof was administered to excuse this delay. Neither do

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relators allege or prove, as an excuse, that the city interposed any actual hindrance or impediment, caused by fraud or concealment, with reference to their claims, which prevented them from asserting their rights sooner. Therefore, they cannot avail themselves of this defense to laches.

Wagner vs. Baird, 7 How. 34 (12 Law. Ed. 681); *Lansdale vs. Smith*, 106 U. S. 391 (27 Law. Ed. 219; 1 Sup. Ct. Rep. 350); *Felix vs. Patrick*, 145 U. S. 317-335 (36 Law. Ed. 719).

Since 1878 an entirely new generation of citizens and taxpayers live in the City of New Orleans, and it would be unjust and inequitable to make them bear a tax which should have been borne by a previous generation.

"The law of laches is necessary to the peace, repose and welfare of society."

Brown vs. Buena Vista County, 95 U. S. 160 (24 Law. Ed. 423).

"Equity will refuse relief to a person who has slept upon his rights and shows no excuse."

Speidel vs. Henrici, 120 U. S. 377 (30 Law. Ed. 718).

"Courts of equity uniformly refuse relief to those who unreasonably delay to invoke their aid."

Parker vs. Dacres, 130 U. S. 43 (32 Law. Ed. 848).

A case closely resembling the case at bar is *Morton vs. Kirk et al.*, 79 Fed. Rep. 290. In that case Judge Williams states the proposition clearly:

"The statute requires the county, if necessary, to levy a five-mill tax. If it fails to do so, it can be compelled by mandamus, as was done in *Macon County vs.*

Hudekoper, 134 U. S. 322 (10 Sup. Ct. 491). But the right given by the statute is the right to an annual levy of five mills. Any creditor can require this levy to be made each year. But can a creditor lie by supinely, permit years to elapse without complaint, and then demand at one time the ruinous levy of all taxes that might have been levied in the past? If that were permitted, how could men buy property with safety? Each year the property ought to bear its annual burden; but, if a ruinous accumulation of unlevied taxes can be cast upon it at the mere caprice of a creditor who was silent when he should have spoken, what safety can a man have in his possessions? It is reasonable to suppose that since the year 1879 (now eighteen years ago) a large part, perhaps a majority, of the property of Knox County has changed hands. Upon what just principle can the present owners, who acquired it free of lien, be required to pay the taxes that should have been paid years ago by the former owners? And if the creditor can lie by for eighteen years before seeking to enforce the collection and levy of a tax, what limit is placed upon his rights? Taxes which could have been easily met as they accrued from year to year, if suffered to accumulate in that manner, would fall with a crushing weight, and usually upon the innocent. I therefore conclude that the relator has no right to a mandamus, and that the demurrer to the response should be overruled."

In the case of *Abraham vs. Ordway*, 158 U. S. 416 (39 Law. Ed. 1037), this Court said:

> "No explanation is given in the bill of her failure to bring suit. * * * It is now well settled that, independently of any limitation prescribed for the guidance of courts of law, equity may, in the exercise of its own inherent powers, refuse relief where it is sought after undue and unexplained delay, and when

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injustice would be done, in the particular case, by granting the relief asked. It will, in such cases, decline to extricate plaintiff from the position in which he has inexcusably placed himself, and leave him to such remedies as he may have in a court of law. *(Wagner vs. Baird,* 48 U. S. [7 How.] 234-238; *Harwood vs. Cincinnati & C. A. L. R. Co.,* 84 U. S. [17 Wall.] 78-81 [21 Law. Ed. 558]; *Sullivan vs. Portland & K. R. Co.,* 94 U. S. 806-811 [24 Law. Ed. 324-326]; *Brown vs. Buena Vista County,* 95 U. S. 157-159 [24 Law. Ed. 422, 423]; *Hayward vs. Eliot National Bank,* 96 U. S. 611-617 [24 Law. Ed. 855-857]; *Lansdale vs. Smith,* 106 U. S. 391, 392 [27 Law. Ed. 219]; *Speidel vs. Henrici,* 120 U. S. 377-387 [30 Law. Ed. 718, 719]; *Richards vs. Mackall,* 124 U. S. 183-188 [31 Law. Ed. 396-399])."

One of the grounds upon which courts of equity refuse relief where the plaintiff is guilty of laches is the injustice of imposing upon the defendant the necessity of making proof of transactions long past in order to protect himself in the enjoyment of rights which, during a considerable period, have passed unchallenged by his adversary with full knowledge of all the circumstances.

The principle has been thus stated by this Court:

"Length of time necessarily obscures all human events and deprives parties of the means of ascertaining the nature of original transactions; it operates by way of presumption in favor of the party in possession. Any acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by some actual hindrance or impediment caused by the fraud or concealment of the party in possession which will appeal to the conscience of the Chancellor."

Wagner vs. Baird, 48 U. S. (7 How.) 258; (12 Law. Ed. 691).

In the case of *Chapman vs. Douglas County*, 107 U. S. 348 (27 Law. Ed. 378; 2 Sup. St. Rep. 62), Mr. Justice Matthews, speaking for the Court, said:

> "And if, in such cases, a proceeding in mandamus should be considered to be the more appropriate and perhaps the only effective remedy, it also is not embraced in the statute of limitations prescribed generally for civil actions. The writ may well be refused when the relator has slept upon his rights for an unreasonable time, and especially if the delay has been prejudicial to the defendant, or to the rights of other persons, though what laches in the assertion of a clear legal right would be sufficient to justify a refusal of a remedy by mandamus must depend, in a great measure, on the character and circumstances of the particular case."

In the case of *Patterson vs. Hewitt*, 195 U. S. 216 (49 Law. Ed. 214), this Court held that a delay of eight years after the right to a deed of an interest in a mining claim has accrued by reason of a proportionate contribution to the work and expenses necessary to obtain patent will defeat a suit to enforce such right. This case strongly supports our position. In further support of the position that a court of equity will not give relief where a party has slept upon his rights we cite the following authorities:

> *Felix vs. Patrick*, 145 U. S. 317-335 (36 Law. Ed. 719); *Hammond vs. Hopkins*, 143 U. S. 224-274 36 Law. Ed. 134); *Wagner vs. Baird*, 48 U. S. (7 How.) 234 (12:681); *Platt vs. Vattier*, 34 U. S. (9 Pet.) 405 (9:173); *McKnight vs. Taylor*, 42 U. S. (1 How.) 161 (11:86); *Bowman vs. Wathen*, 42 U. S. (1 How.) 189 (11:97); *Stearns vs. Page*, 48 U. S. (7 How.) 819

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(12:928); *Badger vs. Badger*, 69 U. S. (2 Wall.) 87 (17:836); *Harwood vs. Cincinnati & C. A. L. R. Co.*, 84 U. S. (17 Wall.) 78 (21:558); *Marsh vs. Whitmore*, 88 U. S. (21 Wall.) 184 (22:485); *Sullivan vs. Portland & K. R. Co.*, 94 U. S. 806 (24:324); *Hayward vs. Eliot Nat. Bank*, 96 U. S. 611 (24:855); *Godden vs. Kimmell*, 99 U. S. 201 (25:431); *Brown vs. Buena Vista County*, 95 U. S. 157 (24:422); *Twin Lick Oil Co. vs. Marbury*, 91 U. S. 587 (23:329); *Lansdale vs. Smith*, 106 U. S. 391 (27:219); *Philippi vs. Philippi*, 115 U. S. 151 (29:336); *Graham vs. Boston H. & C. R. Co.*, 118 U. S. 161 (30:196); *Speidel vs. Henrici*, 120 U. S. 377 (30:718); *Richard vs. Mackall*, 124 U. S. 183 (31:396); *Norris vs. Haggin*, 136 U. S. 386, 392 (34:424-427); *Mackall vs. Casilear*, 137 U. S. 556 (34:776); *Hanner vs. Moulton*, 138 U. S. 495 (34:1036).

Be it remembered that the City of New Orleans specially pleaded laches (Rec., pp. 5, 6, 7, 8). The Supreme Court of Louisiana (Rec., p. 131) maintained this defense in the following language:

> "Very great lapse of time has every appearance of presenting a complete bar to the mandamus in the case before us for decision. The right to bring such an action is necessarily weakened and lost after a number of years have passed. A creditor, having remained inactive and permitted a number of years to elapse, cannot demand a levy of taxes, and by a writ of mandamus obtain an order to compel its levy. In the case here property has changed hands. Other owners would have to pay the amount. They acquired this

property free from all claims. To turn back the hand of time and compel present owners to pay a tax of a remote past has every appearance of the inequitable and unjust. There should be a limit. 'Each year,' said the Court in the first-cited case, *infra*, 'the property ought to bear its annual burden; but, if a ruinous acumulation of unlevied taxes can be placed upon it at the mere caprice of a creditor who was silent when he should have spoken, what safety can a man have in his possessions?' *(Morton vs. Kirk et al.*, 79 Fed. Rep. 290; see, also, *True vs. Melvin*, 43 N. H. 503; *Savannah vs. Georgia*, 4 Ga. 26.)"

See, also, *State ex rel. McCabe vs. Police Board*, 107 La. 162.

In *Hammond vs. Hopkins*, 143 U. S. 224-227 (36 Law. Ed. 134), Mr. Chief Justice Fuller, in closing his opinion maintaining a defense of laches, said:

"The hour glass must supply the ravages of the scythe, and those who have slept upon their rights must be remitted to the repose from which they should not have been aroused."

III.

***The violation of Section 10 of Act 73 of 1873, page 73,* by the School Board and its creditors, constitutes a peremptory estoppel against both in this action.**

Section 10 of Act 36 of 1873, page 73, reads as follows:

"SEC. 10. *Be it further enacted, etc.*, That the Board of Directors of the Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenues shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same,

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and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt."

This section was violated by the Board of School Directors during every year in which these taxes were levied. In the year 1874 they not only exceed the revenues provided by the City Council, which revenues were a levy of one-fourth of one per cent. tax on all the property in the City of New Orleans, but they exceeded their own estimate of expenses, which they submitted to the Council, by $21,014.02, which fact is admitted by these relators on pages 30 and 31 of their brief. During each subsequent year they exceeded the revenues provided by the City Council under the terms of this act by many thousands of dollars, as is admitted by relators on pages 30 and 31 of their brief. The amount of revenues provided for, according to this act, was the amount of tax rate levied by the City Council, and the School Board had no power or authority to exceed, in making contracts, the amount of revenue so provided by the City Council. The School Board had no right or power to contract up to the amount of their estimates, and, in the year 1874, over the amount of their own estimate, when they must have known, as they were in duty bound to know, under the terms of this act, that it was within the discretion of the City Council to adopt their estimates or not, and it was within the discretion of the City Council to levy a rate of taxation greater than one-fourth of one per cent. Nevertheless, in face of this statutory warning, the School Directors, regardless of the law and their powers to contract, entered into obligations, in utter disregard of Section 10 of the act. It was their duty as administrators to ascertain the sum that the one-fourth of one per cent. tax levied on

the taxable valuation of the property in New Orleans would realize, and not to make contracts or enter into obligations in excess of the sums that would be realized from said tax. Yet they issued these certificates of indebtedness, and they were accepted by their employees, in face of the distinct warning in the act that it is "the intent hereof that parties contracting with said board shall take heed that due revenues shall have been provided to satisfy the claims; otherwise, they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt."

In the face of this, what did relators do? Absolutely nothing. Nor is it alleged that they complied with this section of the law; nor is any proof offered that they complied with the law, or any excuse vouchsafed why the law was not complied with. Respondent objected to all proof by relators in this action because they had not alleged that they had complied with this section of the law. (Rec., fols. 11, 12, 14.) Everyone is presumed to know the law, and the School Board and its creditors were in duty bound, not only to know, but to heed, this particular law; but, far from heeding it, the School Board went on piling up debt and issuing certificates of indebtedness; and its creditors, looking on complacently, accepted its certificates of indebtedness, made no protest to the Council or to the School Board, did nothing (as far as this record is concerned), wrapped up in silence and acquiescing in everything that was done, and, after a lapse of thirty-odd years, they, or, rather, their assigns, wake up to a realization that they are entitled to an additional tax rate to pay their claims, to be levied upon a new generation of taxpayers.

We submit that they are estopped by Section 10; by their own course of conduct and negligence, and that it would be

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inequitable and unjust not to enforce the equitable estoppel, which is here urged, and which the city pleaded in answer to this action.

Weaver vs. City and Council of San Francisco, 111 Cal. 319 (43 Pac. 972); *Lamar Water & Electric Light Co. vs. City of Lamar,* 124 Mo. 188 (26 S. W. 1025; 32 L. R. A. 157); *Kingsland vs. City of New York,* 5 Daly, 448; *Fuller vs. Heath,* 89 Ill. 296; *Chicago vs. Shiber & Carkueville Lithographic Co.,* 6 Ill. App. 560; *Continental Bridge Co. vs. City of Philadelphia,* 12 Phila. 185 (34 Leg. Int. 114); *Gambel vs. City of Philadelphia,* 14 Phila. 223; *Hasbrouck vs. Milwaukee,* 13 Wis. 37 (80 Am. Dec. 718); *Smith vs. Broderick,* 107 Cal. 644 (40 Pac. 1033); *Griswold vs. City of E. St. Louis,* 47 Ill. App. 480; *Callam vs. Saginaw,* 50 Mich. 7 (14 N. W. 677).

IV.

Relators are not entitled to an additional tax levy to make up for the taxes which the city was unable to collect from the original levies.

The record shows (pages 85 and 86) that the city has been unable to collect $105,629.59 of the taxes levied for the years 1874 to 1878, inclusive.

Relators contend that, even if they are not entitled to an additional tax upon other grounds, they are entitled to an additional tax in order to make up this deficit of uncollected taxes for said years. This position is utterly untenable. In the first place, relators, in their petition in this suit, did not ask for such relief, and, not having prayed therefor, they cannot for the first time ask for such relief in their brief.

Their petition (Rec., fols. 2, 3) fails to show such an allegation or a prayer for such relief, and, hence, we earnestly urge that they cannot ask for it here.

The City of New Orleans, in the cases of *Labatt vs. New Orleans, Fisher vs. School Board, Gasquet vs. School Board,* all *supra,* and in *Fisher, Tutor, etc., et al. vs. New Orleans,* 180 U. S. 485, was held a trustee or stakeholder of the funds derivable from the taxes of the years 1873 to 1878 for the School Board and its creditors. The status of the City of New Orleans being thus ascertained, relators' remedy against it is to compel the city to collect the uncollected taxes and to exhaust all legal methods to that end, or, if relators believe that the City of New Orleans was negligent in the performance of said trust or unwilling to perform it, they can mandamus the city or its collecting agent to proceed with the collection of said taxes. And, if these relators can allege and prove that the City of New Orleans has neglected to perform its trust in such wise as to cause them injury and loss, they then may have a remedy at law for damages.

Washington vs. Mutty, 39 Wash. 624 (82 Pac. 118), and authorities there cited.
Duperier vs. Police Jury, 31 An. 709.
Huey vs. Police Jury, 33 An. 1091.

The exact proposition presented here was before the Court in the three cases cited above.

All of which is respectfully submitted.

ST. CLAIR ADAMS,
Of Counsel.

I. D. MOORE,
City Attorney.

Dated NEW ORLEANS, October 6, 1910.